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# CONDITIONING DEMOCRATIZATION: EU MEMBERSHIP CONDITIONALITY AND DOMESTIC POLITICS IN BALKAN INSTITUTIONAL REFORMS

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ABSTRACT OF DISSERTATION

Ridvan Peshkopia

The Graduate School  
University of Kentucky

2011

CONDITIONING DEMOCRATIZATION:  
EU MEMBERSHIP CONDITIONALITY AND DOMESTIC POLITICS IN BALKAN  
INSTITUTIONAL REFORMS

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ABSTRACT OF DISSERTATION

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A dissertation submitted in partial fulfillment of the requirements for the  
degree of Doctor of Philosophy in the College of Arts and Sciences  
at the University of Kentucky

By  
Ridvan Peshkopia

Lexington, Kentucky

Director: Dr. Karen Mingst, Lockwood Chair Professor of International Relations

Lexington, Kentucky

2011

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## ABSTRACT OF DISSERTATION

### CONDITIONING DEMOCRATIZATION: EU MEMBERSHIP CONDITIONALITY AND DOMESTIC POLITICS IN BALKAN INSTITUTIONAL REFORMS

The uneven effects of EU membership conditionality on Eastern European reforms continue to puzzle the research community. Sometimes, the research focus has been too large, considering EU membership conditionality as a policy implemented uniformly across policy areas. Other efforts take a too narrow approach by trying to explain the effects of EU membership conditionality in single sectors. I suggest studying this phenomenon through a set of mid-level theories in a cross-country, cross-sectorial approach. I argue that both the intensity of EU membership conditionality and reform outcomes are contingent upon the policy sector context; hence, we should take a sectorial contextual approach in studying them. Reform outcomes result from the interplay between EU's and domestic leaders' interests in a particular sectorial reform. I assume domestic leaders to be rational, power driven actors. I argue that, since they act in some weakly institutionalized political environments such as Eastern European societies, they represent the principal actors in the power game. I assume the EU to be a rational actor as well; yet, differently from Eastern Europe, the role of individual leaders is less distinguishable in the highly institutionalized EU political theatre. In this case, EU institutions are the primary political agents. They are interested in maintaining and enlarging the Union as a stable democracy. Expanding an earlier argument that views the EU as established through consociational practices, I argue that EU membership conditionality is a tool to impose institutional reforms in the EU aspirant countries, so their institutions can be receptive to the EU consociational practices once they join the Union. In these countries, the consociational character of conditionality is more visible, since it seeks to impose in aspirant countries the same practices that have brought democratic stability in some member states. The EU does not impose consociational practices on unified societies, but simply seeks to make their institutions receptive to the EU consociational practices. I test these arguments with the cases of institutional reforms in postcommunist Albanian and Macedonia. I conclude that, generally, EU membership

manages to change Eastern European leaders' interests in institutional reforms, but when it cannot, the reforms are almost impossible.

**KEYWORDS:** Consociationalist Approach, Sectorial Contextual Approach, EU Membership Conditionality, Eastern European Institutional Reforms, Power Calculations

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Ridvan Edmond Peshkopia

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Date

CONDITIONING DEMOCRATIZATION:  
EU MEMBERSHIP CONDITIONALITY AND DOMESTIC POLITICS IN BALKAN  
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DISSERTATION

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University of Kentucky  
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In memory of Nexhat and Manush Peshkëpia

brothers, intellectuals, martyrs

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## ACHRONYMS

CARDS: Community Assistance for Reconstruction, Development and Stabilization

CEAS: Common European Asylum System

CLRA: Congress of Local and Regional Authorities

CoE: Council of Europe

CRPM: Center for Research and Policy Making

DPK: Drejtoria e Policisë Kufitare [Directory of the Border Police]

DShR: Departamenti për Shtetësi dhe Refugjatë (DShR) [Department for Citizenship and Refugees]

DRN: Drejtoria për Refugjatë dhe Nacionalitete [Directory for Refugees and Nationalities]

EAR: European Agency for Construction

EC: European Commission

ECLG: European Charter of Local Self Government

EE: Eastern European

EECs: Eastern European Countries

EU: European Union

EURALIUS: European Assistance Mission to the Albanian Justice System

ECLSG: European Charter of Local Self Government

Eurodac: European Dactyloscopy

FYROM: Former Yugoslav Republic of Macedonia

ICMPD: International Centre for Migration Policy Development

ICTY: International Criminal Tribunal for the former Yugoslavia

IOM: International Organization of Migration

INGOs: International Nongovernmental Organizations

IOs: International Organizations

KKR: Komisioni Kombëtar për Refugjatë [National Commission for Refugees]

LAMP: Land Administration Project

LATP: Law on Asylum and Temporary Protection

LDP: Liberalno-Demokratska Partija [Liberal Democratic Party]

LSI: Lëvizja Socialiste për Integrim [Socialist Movement for Integration]

MB: Ministria e Brendëshme [Ministry of Interior]

MCVBR: Mechanism for Cooperation and Verification for Bulgaria and Romania

MLS: Ministerstvo za Lokalna Samouprava Ministry of Local Self-Government]

MNR: Ministerstvo za Nadvoersni Raboti [Ministry of Foreign Affairs]

MP: Ministerstvo za Pravda [Ministry of Justice]

MPVD: Ministria e Pushtetit Vendor dhe Decentralizimit [Ministry of Local Government and

Decentralization]

MRP: Ministria e Rendit Publik [Ministry of Public Order]

MTSP: Ministerstvo za Trud i Socijalna Politika [Ministry of Labor and Social Policy]

MVR: Ministerstvo za Vnatresni Raboti [Ministry for Internal Affairs]

NATO: North Atlantic Treaty Alliance

NGOs: Nongovernmental Organizations

PD: Partia Demokratike [Democratic Party]

PDK: Partia Demokristiane [Christian Democratic Party]

PDP: Partia Demokratike Popullore [Democratic People Party]

PDSH: Partia Demokratike e Shqiptarëve [Albanian Democratic Party]

PHARE: Poland and Hungary Assistance for Restructuring their Economies

PP: Partia e Punës [Party of Labor]

PPD: Paqe Përmes Drejtesisë [Peace Through Justice]

PPD: Partia për Prosperitet Demokratik [Party for Democratic Prosperity]

PS: Partia Socialiste [Socialist Party]

QKPVT Qendra Kombëtare për Pritjen e Viktimave të Trafikuara [National Reception Center of Trafficking]

RSD: Refugee Status Determination

SAA: Stabilization and Association Agreement

SAP: Stabilization and Association Programme

SIDA: Swedish International Development and Cooperation Agency

SMK: Svetski Makedonski Kongres [World Macedonia Congress]

SDSM: Socijaldemokratski Sojuz na Makedonija [Socialdemocratic Union of Macedonia]

SFRY: Socialist Federal Republic of Yugoslavia [*Socijalistička Federativna Republika Jugoslavija*].

ShAV: Shoqata për Autonomi Vendore [Association for Local Autonomy]

ShIK: Shërbimi Informativ Kombëtar [National Intelligence Service]

UÇK: Ushtria Çlirimtare e Kosovës [Kosova's Liberation Army]

UÇK: Ushtria Çlirimtare Kombëtare [National Liberation Army]

UNHCR: United Nations High Commissioner for Refugees

UNHCR BoT: UNHCR Bureau of Tirana

UT: Universiteti i Tetovës [University of Tetovo]

VMRO-DPMNE: Vnatrešna Makedonska Revolucionerna Organizacija – Demokratska Partija za Makedonsko Nacionalno Edinstvo [Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity].

VSEP: Vladiniot Sekretarijat za Evropски Prasanja [Government's Secretariat for European Affairs]

ZELS: Zaednicata na Edinicite na Lokalna Samouprava na Republika Makedonija [Association of the Units of Local Self-Government of the Republic of Macedonia]

ZpR: Zyra për Refugjatë [Office for Refugees]

## CHAPTER I

### INTRODUCTION

On July 28, 2006 the BBC announced that the Polish President, Lech Kaczynski, “has called for EU member states to reintroduce the death penalty.”<sup>1</sup> This news, coming only a few years after the *Sejm*, Polish legislative body, abolished the death penalty, challenged the Council of Europe’s (CoE) pronouncement that “it is difficult to imagine that [the abolitionist trend], as demonstrated by political and legal developments, could be reversed” (Krüger 1999; Tarschys 1999). The irony of this claim rests on the fact that in April 2000, only a few years earlier, when announcing the abolition of the death penalty by the *Sejm*, a Justice Ministry’s spokeswoman pronounced that “this symbolic act brings us into a group of modern European states” and Poles “are no longer in an infamous group of countries such as Albania, Russia or Turkey” (cf. Peshkopia and Imami 2008). Even though the CoE has made the abolition of the death penalty in Europe its foremost international campaign, it was only after the European Union (EU) made it a condition to join the Union in 1998 that some Eastern European countries (EECs) eradicated that practice. Domestic observers have been surprised with the unity of Albanian elites in defense of the death penalty; yet, strong public support to join the EU forced Albanian leaders to reluctantly accept judicial maneuvers that practically abolished the death penalty in the country except for crimes committed during times of war (Peshkopia and Imami 2008). Differently, neighboring Montenegrins abolished the death penalty for all crimes only three days after they declared the country’s independence in June 2006; this occurred despite the lukewarm Montenegrin public support for the EU. The new Macedonia never instituted the death penalty however, even though the ethnic Macedonian dominated government could have used it as a threat to the subversive Albanian minority.<sup>2</sup>

In August 2000, Macedonian leaders and representatives of the Albanian minority in Macedonia gathered in the lakeside city of Ohrid to sign the Ohrid Framework Agreement (hereafter Ohrid Agreement) deemed to terminate a low-intensity, yet nasty ethnic conflict (Janos 2005). The Ohrid Agreement stipulated constitutional reforms that

practically transformed Macedonia to a multiethnic country, but also exacerbated fears among Macedonians that the country could slip to a federation and, ultimately, partition. Meanwhile, Macedonia continues to resist Greek—and for that matter, international pressure—to change its name to something different from plain “Republic of Macedonia.” In fact, the nation lost a bid to join NATO in April 2007 because of its refusal to change its name even though that membership might have reinforced the country’s security from domestic and international threats more so than the Ohrid Agreement.

On November 1, 2009, the EU lifted visa requirements for three Balkan countries, namely Macedonia, Montenegro, and Serbia, yet excluded from this policy three other countries, Albania, Bosnia and Herzegovina, and Kosovo based on terms that seem to be merely technical. The failure to benefit from the first wave of the EU’s visa liberalization policy for the Western Balkans came as an embarrassment to the Albanian government since Albanian public’s support for EU membership is first and foremost related to their need to break out of their six and a half decade long isolation from the West. Consequentially, the Albanian government vowed to fulfill EU requirements for modernizing its border monitoring legislation, technology, and infrastructure, and clear the way to acquire visa liberalization for its citizens. Finally, on November 8, 2010, the Ministers of Interior of the European Union adopted the proposal to introduce visa free travel for citizens from Albania and Bosnia and Herzegovina.<sup>3</sup> The citizens of these two countries began to travel visa-free in the Schengen zone by the end of 2010.

Moreover, on December 17, 2005, only a few months before an armed ethnic conflict that threatened to rip the country apart, Macedonia acquired the status of EU candidate country. On October 14, 2009, the European Commission recommended the start of accession negotiations for full membership for the Republic of Macedonia. On December 8, 2009, the EU council of ministers postponed granting Macedonia a start date for accession negotiations until at least the first half of 2010. On November 9, 2010, the European Commission released its first Enlargement Package since the enactment of the Lisbon Treaty in 2009. A Press Release by the European Commissioner for Enlargement and Neighbourhood Policy, Stefan Füle, announced the EU Enlargement Package for 2010. The *Commission Conclusion on the former Yugoslav Republic of Macedonia* stated

that the country “continues to sufficiently fulfill the political criteria,” and “[t]he Commission reiterates its recommendation that negotiations for accession to the European Union should be opened.” However, since starting negotiations required a unanimous decision of Member States, the Commission recommended that a “negotiated and mutually accepted solution to the name issue under the auspices of the UN is essential.”<sup>4</sup> However, the *Commission Opinion on Albania's application for membership of the European Union* that was released the same day shocked both the Albanian public and government when it implicitly rejected its application to become an EU candidate country; it stated that “negotiations for accession to the European Union should be opened once the country achieved the necessary degree of compliance with membership criteria, in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and the rule of law.”<sup>5</sup>

The aforementioned vignettes regarding behavioral change in Eastern European countries share non-systematic similarities and differences. All of the four countries mentioned escaped communism in the period of 1988-1991.<sup>6</sup> Two of them, Albania and Poland, struggled only with democratization issues; Macedonia and Montenegro also encountered nation-building problems. All of the nations wanted to join the EU, but only Poland has succeeded thus far. However, their behavior presents inconsistencies both in terms of compliance and non-compliance with international norms in related policies. Exactly when we thought that the Polish society would have normatively embraced the abolition of the death penalty, the Polish President called for its reinstatement not only in his country, but also the entire European Union. However, Macedonia, while denying constitutional rights to a quarter of its population, abolished the death penalty with the Constitution that gave birth to the post-Yugoslav republic. Moreover, was there any rationale for Albanian governments during almost two decades of democratization and institutional reforms, to delay reforms in border control and the immigration system to a point that would jeopardize their top electoral promise: to bring the country closer to the EU? And last, but not least, how is it possible that Macedonia who only acquired independence in 1991 and, during its short history as an independent state went through severe domestic and international challenges, succeeded in fulfilling the political criteria



while Albania whose sovereignty has not been challenged—neither externally nor internally—for the last 66 years, fails to comply with the membership criteria?

These cases are drawn from both distinct policy areas and the general political performance of particular Eastern European countries (EECs). The varying outcomes of these processes—as suggested by either the progress of former communist Eastern European countries toward EU membership as well as Freedom House’s indexes that measure democracy and liberty—suggest several other variables that need to be taken into account in order to explain the differences in state behavior. What unifies these cases is the attraction of EU membership. Hence, one can legitimately ask: How much, and under what conditions can the EU affect democratization and democratic consolidation? What are the mechanisms employed by the EU to affect reforms in countries escaping authoritarian/dictatorial rule? What causes these mechanisms to succeed, and what makes them to fail? What is the interplay between leaders’ power-driven interests, the domestic constraints on their preferences, and the international context?

While the international dimension of democratization is now taken for granted, only recently has research in political science begun to consider cases when other countries, international organizations (IOs), nongovernmental organizations (NGOs), international nongovernmental organizations (INGOs), and outspoken individuals could affect democratization and consolidation. Currently, while there is a general agreement about the relevance of the international environment’s influence on domestic affairs, the expanding wave of democratization continues to challenge the research community with the complexities of such an influence and its outcomes. National and regional idiosyncrasies, historical legacies, demographic compositions, economic developments, time framing, and even geographic locations inhibit us from having a general theory of democratization and democracy consolidation that would allow us to understand, explain, and possibly foresee the democratization dynamics of particular countries and world regions. Mid-range theories might provide responses for many looming and newly emerging questions. While the democratization research community has been engaged in an energetic enterprise to find answers for such questions, this dissertation is an attempt to respond to some of them.

An issue of major academic debate is the role of domestic and international actors in countries' democratization and institutional reforms. While early democracy theorists downplayed the role of international actors in democratization (see for instance O'Donnell, Schmitter, and Whitehead 1986), it will be difficult today to find any research on democratization without references to the effects of the international environment on democratization, except for cases when that research has been exclusively dedicated to domestic dynamics of democratization (see the edited volume by Peter Nardulli (2008)). However, scholars do not always agree on the relevance of international actors on domestic affairs, even if they include the international environment as an independent variable. Disagreements range from defining mechanisms employed by international actors to encourage democratization (Pevehouse 2002; Grugel 1999; Whitehead 1996), to the real effects of the international environment on democratization (Scimmelfenning 2007, 2005; Saideman and Ayres 2007; Kelley 2004a,b). I argue that some of those disagreements stem from definitional fallacies, while others reflect inappropriate research designs.

Scholarly attention to democratic reforms have been lopsided toward reforms that most openly and dramatically affect freedom and equality, and are popular, hence often downplaying the role that other sectorial reforms play in the quality of democracy and good governance. Reforms in education, health services, asylum and immigration, public administration, and local decentralization have always attracted less interest than constitutional, economic, electoral, and judiciary reforms. Such an approach creates problems in understanding the role that domestic and international actors play in institutional reforms since it leaves out of the picture some significant comparative cases where leaders' political preferences differ from sectors more closely linked with the power struggle. Moreover, studying sectorial reforms separated from wider domestic and international contexts has often created a number of methodological problems, some of the most acute being the lack of capability to observe the spillover effects of some reforms on others and the contextual conditions that would factor into such spillovers. Those contextual conditions would also impact the outcome of international assistance to democratization. Discussions of the balance between the domestic and international

contexts where reforms are taking place, the role of international actors, and the interests of domestic actors are needed.

Many of the problems haunting the literature related to the widening and deepening of the European Union appear with research studying democratization, as well as EU accession of former communist countries as tool for democratization. Studying such political phenomena requires research designs that best fit the study questions (Johnson and Reynolds 2008). Following advice from Schimmelfenning and Sedelmeier (2005), research on the Eastern enlargement of the EU needs to expand its comparative focus. This suggestion maintains validity even when we study the effects of Eastern enlargement policies on EU membership aspiring countries. Indeed, most of these policies are intended to affect structural changes in EU membership aspirants from Eastern Europe, but they cannot be the only factors that affect these changes. Structural contexts that reflect historical and demographic conditions, along with strong individual power-driven preferences of new ruling elites in the presence of institutional vacuums, might either enhance or constrain their roles. These are variables that should be taken into account. Such factors differ across countries. When inserted into the same equation with EU membership conditionality, they would help us explain and build some degree of confidence in explaining the outcomes of institutional reforms in some of the former communist countries that have yet to become EU members.

However, aside from the social context where Eastern European (EE) reforms occur, we have another set of actors, namely EU leaders and institutions. They act in response to their structural background as well. This situation calls for an overarching theoretical framework that would enable us to follow the same epistemology for building an argument that explains the effects of EU membership conditionality on EE institutional reforms. I argue that consociational theory serves as a theoretical connection between processes of EU internal integration and processes of EU eastward expansion. As a research program, consociational theory emerged by the end of the 1960s and owes much of its performance and reputation to the work of Arend Lijphart (1969, 1968) as well as a number of authors interested in the small Western European countries (Butenschøn 1985; Daalder 1989, 1974, 1971; Huyse 1970; Lehmbruch 1974, 1968, 1967; Steiner 1987, 1974, 1970). While originally its contributors merely wanted to explain the establishment

and survival of democracy in some severely fragmented European countries, soon they realized the theory could help explain political developments, and also prescribe solutions for other deeply divided societies around the world (Chehabi 1980; Dekmeijan 1978; Dew 1972; Dix 1980; Lijphart 2004, 1999, 1996a; McGarry and Noel 1989; O’Leary 1989; Pappalardo 1981, 1979; Tindigarukayo 1989; Tsebelis 1990).

Contributors to consociational theory claim to have established an elite theory of democratization that bears universalistic validity. According to them, while maintaining social cohesion in deeply divided societies is difficult due to centrifugal factors that tend to destroy the social fabric, elites who are willing to cooperate in order to keep their countries together might be able to replace majoritarian practices and institutions with consociational ones. The latter represent political arrangements that would accord veto power to each of group in the society, allowing them to block the actions of other groups that endanger their own interests. These social groups, called segments or pillars, manage to waive internal cohesion and delegate power to their representatives such as to enable them to conduct negotiations and forge arrangements with representatives of other segments. Closed door negotiations and secret-like political deals produce what has come to be known as “consociational democracy.” This term has become the epitome of stable democracies in deeply divided societies.

Since the days when consociational literature first emerged, some of its contributors have become interested in discovering consociational practices at international levels (Lehmbruch 1974: 92; Lijphart 1974a: 123, 131). Other authors (Costa and Magnette 2003; Hix 1999; Gabel 1998; Taylor 1998, 1996, 1991; Chryssochou 1994; Steiner 1974: 281-3), including Lijphart himself (1999), have tried to see the EU as a “consociational democracy.” Even though such efforts have attracted criticism (Andeweg 2000), I argue that, contingent upon re-conceptualization and, indeed, return to its original claims and goals, the consociational research program enables us to explain the motivations of EU institutions in conditioning institutional reforms in EU aspirants. In order to reach such a goal, some conceptual refinishing of the consociational theory is needed, namely we need to resolve the tautological relationship between consociationalism as practice—i. e., independent variable in the explanation of democratic stability in deeply divided societies—and consociationalism as a definitional

category of such a stability. I argue that eliminating the concept of “consociational democracy” in favor of “stable democracy” in segmented societies will be practically costless. In addition, we gain a priceless theoretical framework that would help us to employ the same epistemological, ontological and conceptual framework in explaining both the EU internal integration and its eastward enlargement.

Building on an argument of Costa and Magnette (2003) and equipped with consociationalism as an elite theory of democratization, I will analyze EU membership conditionality as a set of consociational practices that aim at expanding EU democratic stability in EU membership aspiring countries from Eastern Europe. If, as Gabel (1998) suggests, EU member states parallel various social segments of a stable democracy, we can expand this notion to EU membership aspiring countries. Therefore, both EU and EE elites negotiate and employ consociational practices to build institutions and/or reform the existing ones in the aspirant countries in a way that would conform to the existing EU model and contribute to the democratic stability of the Union rather than undermining it. By the same token, EU elites apply consociational practices to preemptively expand democratic stability beyond existing EU borders to potential members. These conditions reflect the political preferences of EU elites, but differ from one policy area to the other. At this point, elites of the different “segments”—i. e., EU and EU membership aspiring countries—enter negotiations, and it is expected that the outcome of these negotiations would define the pace and quality of institutional reforms in EU membership aspiring countries.

While the proposed analytical framework will help us to understand the EU motivations behind EU membership conditionality as well as why EU membership conditionality works the way it works, we also need to know why the sectorial reforms in these countries produce the outcomes that they produce. In order to explain the varying pace and success of different institutional reforms in Eastern Europe, I propose a set of mid-level theories that comparatively analyze such reforms in two democratizing countries in Southeastern Europe. Since these theories aim at explaining the role of the EU and domestic leaders’ quest for attaining and maintaining power, the key variables are EU membership conditionality—that is, the set of conditions the EU places upon those countries wishing to attain EU membership—and domestic leaders’ interests in

conducting a certain sectorial reform. Indeed, EU membership conditionality offers an excellent analytical opportunity since most EU conditions focus on distinct institutional reforms, thus allowing the emergence of a wide range of comparative cases. Often the conditions represent general policy principles, but sometimes they represent specific policy preferences of the EU main and/or leading actors. The dynamics of reforms become more complex if we take into account ruling elites' changing political preferences regarding different reforms over time and the fact that some reforms openly fall on areas perceived as sensitive to countries' cohesion and security, especially in ethnically divided societies.

I call this model a *sectorial contextual* approach to democratization; it serves as an alternative to the impossibility of a global, and even regional, theory of democratization. Theoretical explanation of the effects of EU membership conditionality on institutional reforms in EU membership aspirants cannot hold universalistic validity because of the very peculiar nature of the EU and its relationship with neighboring EECs. Therefore, a sectorial contextual approach will rely on mid-level theories of democratization built on an elite approach to democratization and a rational assumption of political actors' motivations. Moreover, ample evidence shows that, often, specific conditions are conveyed by the EU to different countries with different intensity and continuity, and different countries obey them to various extents. The same conditions may produce different policy changes and institutional reforms. I argue that whether or not a country has already consolidated its statehood represents a major factor that determines the nature and intensity of the EU conditions to be fulfilled by that country in order to come closer to achieving EU membership. States at an earlier stage of the state-building process will tend to follow EU policy prescriptions compared to states with a longer history of independence and statehood.

I develop in detail the cases of Albanian and Macedonian institutional reforms. These countries share similarities that stem from their ideological affiliation with the Soviet Bloc and/or the Soviet style society. Both these countries converged to the nationalistic socialist systems, with loosened ties with the Soviet Union. These similarities—albeit with different nuances—might serve as a good explanation of these countries' state organization during communism, the reforms that they needed to adapt,

and institutions that they needed to build in order to assist them during their transition to democracy and its consolidation. For Albania, there was no walk of life that did not need reforms, while Macedonia started in 1991 its institution building from scratch as an independent state in a process that includes both state-building and democratic institutional reforms. From the economic perspective, communism, with disputable success, tried to transform these countries from agricultural economies of the pre-WWII to Soviet-style mega-industrialized nations, while agriculture varied from totally nationalized (Albania) to mostly private (Macedonia).

These similarities notwithstanding, these countries have fared differently during various periods of their reformation from communist dictatorship and socialist economy to pluralism and open market economy. If progress toward EU membership can be held as a standard, Macedonia is much closer to the EU than Albania. Macedonia, after having negotiated the Stabilization and Association Agreement (SAA) with the EU in the summer of 2001, gained candidate status in 2005, applied for full membership in 2008, and was qualified for accession talks in fall 2009, but was denied the accession negotiations due to its standing issues with Greece, a EU member country. Macedonia has also taken a major step closer to the Union in fall 2009 when it signed a visa liberalization agreement with the EU.

As for the laggard Albania, the EU finally agreed to open negotiations for the SAA in January 2006, and the visa liberalization agreement was reached in fall 2010. However, the EU failed to offer Albania the status of EU candidate country in fall 2010, making its application the first one to have been rejected by the EU thus far. In its opinion on Albania's application for membership of the European Union, the European Commission explained that

negotiations for accession to the European Union should be opened with Albania once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and rule of law.<sup>7</sup>

This statement shows that lack of institutional reforms rather than economic criteria are blocking Albania's closer association with the EU. The purpose of this research is to help explain the variety in outcomes of institutional reforms in Albania and Macedonia, and thus understand the role that EU membership conditionality, domestic leaders' political preferences, and structural factors play in these reforms.

With the collapse of communism, these countries are undertaking reforms in all sectors; yet only four of them will be the focus of my attention: the constitution, asylum, local decentralization, and judiciary reforms. Different domestic leaders' preferences in sectorial reforms and different EU preferences in each of these reforms will help map out the causes of different intensities of EU membership conditionality over the time span of the observation, 1991-2010. The very nature of each of these reforms will require historical process-tracking.

This dissertation proceeds as follows: Chapter II offers an overview of postsocialist transition and democratization as well as a detailed critical review of consociational theory and its potentials as an appropriate framework for explaining the effects of EU membership conditionality on EE institutional reforms. Chapter III develops my model, which I call a *sectorial contextual* model because all variables need to be analyzed within the context of a given reform, yet these reforms need to be studied together in order to account for reform spillovers. Chapters IV-VII provide an empirical analysis of four institutional reforms in Albania and Macedonia. Chapter VIII will summarize the findings and suggest future research projects.

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<sup>1</sup> Polish leader backs death penalty, BBC, July 28, 2006, available at <http://news.bbc.co.uk/2/hi/europe/5225406.smt> [Visited July 30, 2006].

<sup>2</sup> I will refer in this dissertation to "Macedonians" as the Slavic speaking population of the country and to "Albanians," "Serbs," "Turks," "Bulgarians," and "Roma" as the populations that belong to the respective ethnic groups. A more appropriate form would have been "Slavo-Macedonians," "Albanian-Macedonians," "Serb-Macedonians," "Turk-Macedonians," "Bulgarian-Macedonians," and "Roma-Macedonians," but "Slavo-Macedonians" sounds offensive for the majority of the Slavic speaking population in the country (Lebamoff and Ilievski 2008: 8). Indeed, including the denominator "Macedonian" to all the ethnicities would have helped to the perception of Macedonia as an overarching identity of all its ethnic groups. However, since Macedonians themselves have decided to opt out of such a solution, I will refer them as Macedonians, and to other ethnic groups living in Macedonia as Albanians, Serbs, Turks, Bulgarians, and Roma. It is easily perceivable what an insurmountable hurdle such identity politics represent for nation-building and social cohesion.

<sup>2</sup> As the European Stability Initiative Report (2002: 5) notes in the case of the Macedonian mix populated city of Kičevo [in Albanian Kërçovë], "[t]he majority of urban Macedonians in Kičevo have acquired secondary or higher education. Their privileged access to the educational system was the key to



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participating in the benefits of the socialist economy in which jobs were strictly graded according to educational requirements.”

<sup>2</sup> According to the European Stability Initiative Report (2002: 5) notes, “the exclusion of Albanians from the socialist sector and the benefits it offered have forced them to seek out economic strategies, chiefly labour migration and small-scale trade, which have left them much better equipped to survive the collapse of the socialist system.”

<sup>3</sup> “Visa free regime for Albania and Bosnia and Herzegovina: the European Commission welcomes the Council’s decision.” November 8, 2010. At <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/548&format=HTML&aged=0&language=EN&guiLanguage=en> [Visited November 20, 2010].

<sup>4</sup> Communication from the Commission to the Council and the European Parliament “Enlargement Strategy and Main Challenges 2010-2011.” European Commission, COM (2010)660 final). At [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Visited November 20, 2010]. “Štefan Füle, European Commissioner for Enlargement and Neighbourhood Policy: Press points on Enlargement Package.” November 9, 2010. At [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Visited November 20, 2010].

<sup>5</sup> “Commission Opinion on Albania’s application for membership of the European Union.” European Commission, COM(2010) 680. Brussels, November 9, 2010. [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Visited November 20, 2010]. See also “Štefan Füle, European Commissioner for Enlargement and Neighbourhood Policy: Press points on Enlargement Package.”

<sup>6</sup> Since the collapse of communism in Eastern Europe, the former communist countries have made relentless efforts to reform their institutions, economies, and identities; countries residing within the Eastern portion of the Cold War political divide decided that it was time for them to shake off the two-century long stigma of backwardness correlated with their geographic position versus the developed Northeastern part of the continent. Central Europe—a term previously adopted by German philosophers of the counter-enlightenment (*Mitteleuropa*) to distinguish “pure and virtuous Germans” from the “corrupted French and British”—but later borrowed from Milan Kundera’s political texts of the 1980s by some Eastern European societies in search of their identity, aimed at explicitly or implicitly excluding others, especially Russia, in order to dramatize the opposition of Central Europe and Eastern Europe, but also all Southeastern European countries, “possibly in order to help the West to limit its moral dilemmas” (Antohi 2000: 64-5). As Antohi goes on,

in the name of liberty and justice, another historical injustice was being reproduced and reinforced: the double exclusion of those Communist countries (and, after 1989, of their postcommunist avatars) that are Southeast, not Central European.

Arguably, the marking out of such geopolitical categories is not an innocent act, since the complex notion of Europe “comprises both market categories such as Southeast Europe (the Balkans), East Central Europe, Eastern Europe, and unmarked categories, e. g. Northwest Europe, Southwest Europe, West Central Europe” (Todorova 2009, cf Antohi 2000: 66). Thus, Europe lost its Eastern part since those “unmarked” categories have pushed to otherness the countries of the Balkans and the former Soviet Union (Antohi 2000: 66).

Throughout my school years in my native communist Albania, which coincided with the apex of the Albanian nationalist-communism, we were taught that our national hero, Gjergj Kastrioti Skënderbeu, who single-handedly held off the Ottomans in the mountains of Albania for 25 years in the Fifteenth Century, had practically saved Western civilization from extinction. Glances at the map used to make my little brain wonder how that would have been possible; obviously, the Ottomans could have easily circumvented the lands of Albania and flanked Christendom from the East rather than South. As I was maturing full of doubts about the Albanian nationalist-communist dogma, I began to dismiss those myths as Albanian communists’ obsession, only to learn that Croats, Hungarians, Montenegrins, Poles, and Serbs had already developed their own mythical obsessions with King Petar, King Hunyadi, Prince Lazar, and King Ladislaus respectively. Even later, I would discover that, similar to us Albanians, other Eastern Europeans do not identify themselves as Eastern European, not even with the country where they live if they happen to be ethnic minorities, but after their ethnicities (see also Roskin 2002). Moreover, we all revile our less-Western neighbors, and denounce them for their Eastern “barbarity” (Nodia 2002: 205, 2001: 32; Kaplan

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1994: 149). Yet, my discovery of the Eastern European mental mapping had just begun. After the Albanian multiple Iron Curtain fell slightly later than the one imposed on the rest of our fellow Eastern Europeans, I had a chance to meet some Romanian colleagues in a conference, only to learn that I was an Easterner talking to some Westerners. Confused and ashamed of my ignorance in geography, I opened a map of Europe, only to reassure myself of what I knew: Romania was geographically located more East than Albania. With the hope that truth would keep all of us free, I made my conversers aware of that fact, only to realize that, by then, the Northern Hemisphere was spinning clockwise.

In order to save the reader from this postsocialist Dystopia, I will continue throughout this Dissertation with the traditional reference to Eastern Europe as the land and societies that inhabit it located to the East of the political Iron Curtain, but which still remain within what is geographically known as the European continent—the latter defined as the land that stretches from the Ural mountains in the East to the Atlantic Ocean in the West. That community of polities comprises Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Kosovo, Macedonia, Moldova, Montenegro, Latvia, Lithuania, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, and Ukraine, a total of 23 countries. I will refer differently to the region only if that difference rests within a quote. Within this region I will distinguish the Balkans as a subregion, often only to narrow down the research focus.

<sup>7</sup> European Commission. “Commission Opinion on Albania’s application for membership of the European Union,” {SEC(2010) 1335}. Brussels, November 9, 2010. COM(2010) 680.

## CHAPTER II

### CONSOCIATIONAL THEORY, EASTERN EUROPEAN DEMOCRATIZATION AND EU MEMBERSHIP CONDITIONALITY IN POLITICAL SCIENCE LITERATURE

This chapter analyzes three sets of literature. First, it gives a critical assessment of consociational theory, points to its pitfalls and highlights the opportunities that it presents in conceptualizing the EU as a stable democracy built on consociational practices. The theory also helps to explain the EU's eastward expansion through conditioning a set of policies that can be considered as consociational practices to EU membership aspirants from Eastern Europe. Second, the chapter offers a review of Eastern European democratization literature with a focus on highlighting the actors and factors defining the pace and direction of democratization. Third, it assesses the EU membership conditionality literature, its shortcomings and the opportunities it offers for studying EU negotiations with the Balkan countries as they reform their institutions in preparation for the EU accession. The final goal is to detect theoretical gaps that need to be addressed and to reconstruct thus theoretical explanations of how EU membership conditionality affects Eastern European institutional reforms.

#### **Consociational Theory: Defenders and Critics**

In his article "Consociational Democracy" published in 1969 in *World Politics*, the Dutch social scholar Arend Lijphart promised to provide an elite theory of democratization that would shift the explanatory focus from structural factors of pluralist theorists to rational choices of ruling elites.<sup>1</sup> The article was a culmination of scholarly efforts during the late 1960s to walk away from the structuralism of the 1950s and early 1960s, which claimed to find sources of a society's regime choice among its socio-economic and cultural features (Lipset 1968, 1960, 1959; Lipset and Bendix 1959; Smelser and Lipset ed. 1966), and move towards individualist and institutionalist approaches that view policy change as a result of elite's behavioral change (Connor 1967; Bluhm 1968; Lehmbruch 1975, 1968, 1967; Lijphart 1969, 1968; Rogowski and Waterspring 1969; Rothchild 1970).

Consociational theory has tried to reconcile on the one hand the simultaneous emergence of “primordialist” sentiments where parochial loyalties are able to putatively disrupt modern democracies, and on the other a turn from socioeconomic determinism toward elite voluntarism.<sup>2</sup> All in all, consociational theory has been able to displace other elite-centered concepts and theories that preceded it (Lustik 1997: 97)<sup>3</sup> and, obviously, became a fashionable elite theory of democratization for more than three decades.

Consociational democracy serves to describe “government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy” (Lijphart 1969: 216). It has been depicted as an effort “to refine and elaborate Almond’s typology of democracies” (Lijphart 1969: 207).<sup>4</sup> Lijphart suggested a new category for democracies that manage to remain stable even in deeply divided societies: consociational democracy. This definition simultaneously highlights the stability of these democracies in segmented societies and provides a means of achieving such democratic stability.<sup>5</sup> In cases where political parties, interest groups, media, schools, youth and other voluntary associations identify with subcultures, the concentration of social interests in the subcultural social segments exacerbates political conflict along the lines of segmental divisions. As the consociational argument suggests, in these societies, contending groups, after having achieved internal homogenization, rise as pillars upon which elites rest at the top. The major novelty proposed by consociationalism is that decision making by these elites rely on compromises rather than majority rule. Elites reach out to each other and forge agreements and deals that will assure social cohesion. Other authors argue that, in order to reconcile incompatible and transitive preferences that characterize deeply divided societies, compromise should not serve as an intermediate solution, but as a package deal with each social segment winning on some issues and losing on others (Lehmbruch 1974: 91–2).

Consociationalist theory has drawn severe criticism. Its critics have pointed to both its conceptual, methodological and empirical pitfalls. Brian Barry (1975a) has highlighted the tautological character of Lijphart’s concepts of accommodation and consociationalism, offering them both as explanatory variables and descriptive categories, while van Schendelen (1984) joins Barry in dissecting the empirical pitfalls of consociational theory. In addition, Barry (1975a: 481) points to the tautological

relationship between Lijphart's claim that consociational democracies are both "fragmented but stable democracies and countries with 'government by elite cartel.'" Arguably, this was a shift from consociationalism as an independent variable to consociationalism as typology, hence allowing Lijphart's typology to substitute for Almond's one; while Almond's typology ruled out "any 'fragmented but stable' democracy," Lijphart's typology ruled out any "fragmented but stable" society not ruled by "government by elite cartel" (Barry 1975a: 481; see also Lustick 1997: 99-101). Other authors have pointed to the degenerating tendency of the theory after continuous additions of variables in order to accommodate persisting empirical rejections of its claims (Bogaards 1998; Lustick 1997). Yet other critiques have targeted the unclear division between the dependent and independent variables, as well as between the theory's explanatory character and its normative claims.

Critics have also pointed to the conceptual and definitional problems of consociational theory. Critiques range from the lack of definitions for "democracy" and "stability" to "plural society" and "segmental cleavages" to "crosscutting cleavages." Lijphart's (1977: 4) attempts to finally address democracy "as a synonym of what Dahl calls 'polyarchy'" and not as "a system of government that fully embodies all democratic ideals, but one that approximates them to a reasonable degree" have not satisfied his critics. They point to the fact that his definition of democracy seems impossible to operationalize and has raised questions about the meaning of "reasonable" and "democratic ideals" (Lustick 1997: 104). Moreover, it is questionable how much of a polyarchy a consociational democracy can be when, in the former, competition between the elites is, more than anything else, essential, while in a consociation, the opposite is essential, namely, intense cooperation (Van Schendelen 1984: 32). As for the concept of stability, critics have noted that Lijphart's definition of it as a multidimensional concept that jointly and independently combines ideas such as system maintenance, civil order, legitimacy and effectiveness, are imprecise and make difficult the development of rules for distinguishing "unstable" from "stable" cases (Lusrick 1997: 105). Even more critiques have been addressed to Lijphart's concepts of "plural societies" and "segmental cleavages." Many items on the long list of cleavages that define a segmented society characterize almost every society. As one critic (Schendelen 1984:31) asks, "can one say

that some division in *not* a cleavage and that cleavage is *not* segmental?” (cf. Lustick 1997: 106).

The “favorable factors” have been among the most criticized features of consociational theory, and the theoretical and empirical attention paid by consociational theorists in addressing such criticism has contributed both in unveiling—and exacerbating—the theory’s logical inconsistencies and its degeneration. The list of fourteen favorable conditions—as counted by Bogaards (1998)—has been amended by Lijphart in the course of seventeen years, obviously reacting to criticism or trying to adjust the theory to new empirical data generated from other countries and continents.<sup>6</sup> The favorable factors lack theoretical coherence since they were not deductively acquired from the theory, but inductively obtained from empirical tests (Bogaards 1998: 476; Steiner 1981b). Other contributors to the theory have also added conditions as they fit their case studies, resulting in the *ad hoc* character of the favorable conditions (Steiner 1981: 315);<sup>7</sup> others have noticed the static nature of the favorable conditions and their incapacity to affect change in elite behavior (Dix 1980; Bogaards 1998); yet others have revealed serious mistakes in the quantified values of these conditions (Bogaards 1998: 484). Also, the lack of distinction in consociational theory between the favorable factors for transition and those for consolidation have generated criticism since the factors that impact transition might differ from those that affect consolidation (Rustow 1970: 346, cf. Bogaards 1998: 484). Lehmbruch (1975) tries somehow to tackle this issue by defining as “genetic conditions” those that generate consociational democracy and “sustaining conditions” as the ones that are conducive for its maintenance. Lijphart (1985: 119) responds to the criticism by pointing out that “a factor that is favourable for the *establishment* of a consociation will also be a positive condition for its *maintenance*.”

Consociationalist theorists have never managed to clearly disentangle the relationship between the favorable factors as social structures and elite decisions as an individualist approach, hence the tension between determinism and voluntarism. As Bogaards (1998: 485) notes, consociational theory treats the favorable factors as given, fixed parameters of political life, and the relationship between favorable factors and elite behavior, with the former affecting the latter (see also O’Leary 1989; and Dix 1980). Here consociational theorists split between the “orthodox” who consider the favorable

factors as conditions, and the “latitudinarians” who consider them no more than helpful circumstances (Bogaards 1998: 487). Lijphart himself has dismissed the deterministic role of conditions as “helpful but neither indispensable nor sufficient in and of themselves to account for the success of consociational democracy” (Lijphart 1977: 54, cf. Bogaards 1998). That has prompted Van Schendelen (1984: 114) to scoff: “the conditions may be present and absent, necessary and unnecessary, in short conditions or no conditions at all.” Later in his career, Lijphart (1984: 220) was increasingly inclined toward determinist factors, turning to other structural variables, namely pluralism, population size and the cultural inference of a British heritage.

Bogaards (1998: 490) equates consociational theory’s conflict between determinism and voluntarism with the conflict between the empirical and normative value of the theory. Indeed, other authors have pointed to dangers that the normative application of consociationalism might represent: as Barry’s (1975b: 395) sarcastic apposite of the Irish saying “Live horse and you’ll get grass” goes, “[h]ave proportional representation and a grand coalition and you’ll become Swiss or Dutch.” Lijphart’s critics have warned against Lijphart’s inclination to focus more on the normative potentials of the theory than its explanatory ones (Barry 1975a,b). That, according to Lustick (1997: 108) represents a shift from good science to good politics.<sup>8</sup>

Consociational theory builds on three types of variables; a sociological variable (the division of society into pillars or segments); an institutional variable (a proportional electoral system and some protection mechanisms for minorities); and a behavioral variable (the inclination of elites to negotiate compromises) (Costa and Magnette 2003). Implicitly, consociational practices will apply simultaneously in three different worlds and result in the same conclusion for all of them: one of these worlds is run by social structures; the other by institutions; the third by elites. This is, indeed, how the consociationalist theorists have developed their theory thus far; when elites fail to take decisions needed for a stable democracy, consociational theorists search for social structures or institutions to explain elites’ decisions. This is a logical fallacy since it searches for structural or institutional determinants in actions of leaders who are assumed to be power-driven. One has the choice to remove elites from the explanatory equation and rely only on deterministic social structures as necessary and/or sufficient factors;

however, consociational theory would then provide nothing new from the existing pluralist theories it claims to address; consociationalism was born as an elite theory, and only there does its scientific vigor rest.

However, in face of such criticism, consociational theory has shown surprising resilience and, with disputable success, has even managed to expand its focus to international relations, especially as relates to efforts to frame EU governance within a consociationalist model (Lijphart 1999; Bogaards 1998; Gabel 1998; Chrysochoou 1994; for a critique, see Andeweg 2000: 515). Being initially interested only in how domestic factors affect consociationalist solutions for deeply divided societies, around the mid-1970s, consociational theorists became more aware of the impact of international consociationalist models on domestic politics. Some authors became interested in demonstrating how stable democracies implement patterns of international decision making that could be considered as consociational practice (Lehmbruch 1974:92; Lijphart 1975: 123, 131). The case is too tempting to resist, and Lijphart (1999) himself has explored and endorsed the similitude of the EU with his archetypical consociational democracy. The EU was founded by its member countries' elites in an effort to promote stability and democracy in the war-torn continent; most of its activity continues to be conducted behind closed doors, secretly, and with little to no accountability to citizens (Hix 1999; Gabel 1998). Bargain style negotiations are the dominant way of taking decisions and minorities are empowered by veto in most decision-making activities. Even though since the Single European Act in 1987, unanimity as a criteria for decision making is no longer required for member states, except in areas of high salience, both the Council of Ministers and the European Commission which represent intergovernmentalism and supragovernmentalism respectively, continue to decide consensually. Some political scholars go as far as to normatively propose consociationalism as a remedy against the "democratic deficit" of the EU (Weiler, Haltern, and Mayer 1995).

Although those who offer a consociational interpretation of the EU claim that all four of Lijphart's consociational characteristics can be discerned, sometimes they nominate different consociational features per each of these characteristics. Building a strong case in favor of the consociationalist nature of the EU, Gabel (1998) parallels them as follows: (1) grand coalitions rest within the European Parliament; EU member states'



considerable autonomy in some policy areas substitutes for segmental autonomy; (2) proportionality—or even overrepresentation of the smaller member countries—in the composition of EU institutions; and (3) the continuation of consensual decision making—even after the introduction of qualified majorities—as mutual veto. Moreover, the EU has better prospects for developing consociationalist democracy because it has what most segmented societies lack: the European Commission as an integrative entrepreneur. Potentially, even the European Parliament can emerge as an integrative entrepreneur since, as Gabel (1998: 472) points out, one minor reform that would increase the agenda-setting power of the European Parliament might also promote cross-cutting cleavages. Arguably, the power to initiate legislation might promote transnational coalitions in order to lobby the EU agenda. In turn, these movements might successfully attract public allegiances, i.e., overarching loyalties (Gabel 1998; see also Chrysochoou 1994). Lijphart (1999: 34) himself viewed EU institutions as very close to the model of consociational democracy only in the case when the EU is seen as a federal state: the Council substitutes for a High Chamber, the Treaty for a “rigid constitution,” and the Commission for a “coalition government.” Those who oppose that view either dismiss the topic altogether,<sup>9</sup> or point out the originality of the EU and the impossibility of its reduction to some variations of the federal model (Costa and Maignette 2003: 9).

Another view of the EU is as a new form of consociationalism distinct from both the classic federal and unitarian versions, hence promoting it as a general analytical framework rather than an item to be incorporated into other paradigms (Costa and Maignette 2003). The latter consider the transposition of the consociational model to the EU as conceptual overstretching and propose a separate lair for the EU in the existing typologies of democracy. These arrangements are determined by the very nature of the social segments. In my view, promoting consociational theory as a general analytical framework holds significant potential in explaining not only the internal integration of the Union but also its negotiations with membership aspirants from Eastern Europe. The question is whether practices that brought the EU into being and keep it in business are consociational practices; I contend they are. The case of the EU offers a great opportunity to observe how elites want to expand the institution model for a stable democracy by proposing to other polities much of the same consociational practices applied to their own

political system, namely, proposing to the EECs the same consociational practices that have helped the Western European countries to establish a stable, democratic EU. The purpose remains the same: creating a stable continental democracy out of a segmented continental society. Conditions that the EU places upon candidate countries can be seen as efforts to homogenize the pillars and strengthen popular attitudes favorable to government by grand coalition.

### **Eastern European Developments in Contemporary Democratization Literature: Actors and Factors**

Research about Eastern European democratization has developed along two divergent lines. Work conducted during the early and mid-1990s has been an extension of models built to explain the Latin American and South Asian experiences. Necessarily, those models needed to follow suit with the dominant characteristic of democratization literature of the 1980s, that is, its ahistorical approach to transition and democratization. Such an approach claimed universality by discounting the contextual background of the political transformation process and perceived democratization theories as applicable in any world region. Hence, some of the most prominent democratization theorists attempted to explain Eastern European democratization by applying theories that have been built to explain Latin American transformations in the late 1970s and 1980s (Lijphart and Waisman eds. 1996; Haggard and Kaufman 1995; Karl and Schmitter 1991; Przeworski 1991; Di Palma 1990). Arguably, the existing theories were well positioned for studying democratization since its third wave began from Latin America; adding the Eastern European cases would give scholarly efforts a comparative advantage (Bunce 2003).

The second approach however, represents the dominant trend among those studying Eastern European democratization. The contributors to this literature try to give explanations of processes that occur under specific historical conditions and find among those conditions potential explanatory variables. Efforts to expand the explanatory power of democratization theories have led some authors to highlight the similarities in the postsocialist world rooted in the peculiarities of communism. These peculiarities represent factors that set democratization in former communist countries apart from

democratization in other world regions. For other authors, comparison of nation-building in 22 European postsocialist countries with other cases of the third wave of democratization would be inappropriate. Arguably, the most useful comparisons are those within the universe of the 27 postcommunist and postsoviet countries which share basic characteristics but differ in important political details (Bunce 2002). Differences among Eastern European and former Soviet Union subregions and differences among individual countries explain different postsocialist pathways as they can show whether or not the socialist past helps produce a rough consensus about the political and economic successor regimes to state socialism.

The historical background of the region calls for attention to defining peculiarities of postsocialist democratization. Elster, Offe, and Preuss (1998: 1) categorize these conditions as (1) the material legacies, constraints, and sets of habits and cognitive frames that are inherited from past socialist regime; (2) a turbulent configuration of new actors and new opportunities for action; and (3) the foreseeable new consolidated institutional order under which agency is institutionalized and a measure of sustainability (or consolidation) of those agency-shaping institutions. Since the authors are able to distinguish these phenomena in a time axis, their suggestions can offer an accurate explanation of what is happening and expected to happen in the reforming Eastern Europe and its subregions. Moreover, Elster, Offe, and Preuss have set the baseline for studying institutional reforms in the region. First, they employ the *Tabula Rasa* notion to describe the thorough institutional and authority vacuum that succeeded what they call the communist abdication of power (see also Laar 2002).<sup>10</sup> Second, in the circumstance of weak institutions, agency chaos, and lack of authority gravity centers, often deceptive and inapplicable Western models rather than autochthonous preparatory work performed by the opposition upon the old regime dominated the public scene. Third, the *Tabula Rasa* notion applies to *authority* alone, not to *power*, and lack of agency refers to the lack of effective institutional and legal parameters, not to the individual actors along with the material resources attached to them, their formal and informal ties to other agents, political memories, habits, frames, feelings of guilt and pride, loyalties and hostilities, fears and hopes (Elster, Offe, and Preuss 1998: 25-27).

Rupnik (2002, 2000, 1999) suggests several factors that affect the pace of democratization in former communist countries in CEE: the legacies of communism, that is, the nature of the old communist regime and the depth of its imprint on society;<sup>11</sup> market and civil society, that is, the willingness of countries to embark upon radical economic reforms rather than postponing market reforms and privatization, while simultaneously supporting the development of civil society; a tradition of the rule of law and the “Habsburg factor,” that is, the influence of the “Habsburg” legal political culture; nation-state building and “homogeneity,” that is, the difficulties that democracy faces from deeply entrenched fears that democratization might endanger national sovereignty; the cultural argument that connects democratization with religion;<sup>12</sup> and the presence of an international environment that would favor democratization. However, even though Rupnik’s model encompasses most of the key variables that would explain differences in the pace of democratization between the Central and Eastern part of the continent with countries from its Southeastern peninsula, the lack of systematic empirical work leaves his theoretical argument untested.

A critical assessment of Rupnik’s model with the model suggested by Elster, Offe, and Preuss will help to distinguish some relevant contextual elements as prerequisites for determining a successful transition from communism to democracy. Most of these preconditions have been on the focus of theoretical debate and empirical work, but other factors have not attracted the same scholarly attention. This chapter will continue with a critical assessment of the existing theoretical explanation of these political phenomena deemed to be relevant causal factors affecting democratization and reformation in the postsocialist CEE, in an effort to spot theoretical gaps and empirical shortcomings that need to be addressed in order to facilitate our understanding of the politics of reformation in CEE, and also enable us to explain its causal factors.

### *The Legacies of Communism*

The Leninist legacy stands as one of the most distinguishable features of a postsocialist society; Leninist structures led to similarities among countries and regions otherwise as diverse as CEE, Baltic countries, the Balkans, Russia, post-Soviet republics of Central Asia, Cuba, China, and Indochina (Peshkopia 2010; Bunce 1999; Fish 1999, 1998a,b).

That legacy includes one-(communist) party rule; state-run economies oriented toward satisfaction of the population needs rather than consumer wants; little or no private property; state monopoly of mass-media, health care, education, transportation, energy, retirement funds, housing and other public services; hostility toward the individual, their rights and liberties in favor of community-friendly attitudes and policies; distrust of the army and high reliance on the secret service to oppress and repress dissent; control over internal population movement, and especially travel abroad; inefficient institutions characterized by a stifling bureaucracy subordinated to the bureaucratized communist party structure; and lack of political legitimacy of the ruling elites caused mainly by sham elections that rubber-stamped communist party decisions (Peshkopia 2010, 2008; Bunce 2002, 2000).

A significant part of the literature related to postsocialist transformations tries to establish causality with the pre-communist history of CEE (Peshkopia 2010; Janos 2005; Tismaneanu 2000; Crawford and Lijphart 1997). Rupnik's (2002, 2000, 1999) model combines variables from the near communist and distant pre-communist history of the region. Some authors tend to view that tradition from the political culture perspective (Tismaneanu 1995). For others, it is the institutional tradition of the rule of law notion instilled by the "Habsburg" factor in some of the Eastern European countries that were part of the Austro-Hungarian Empire as opposed to the Tsarist and Ottoman political tradition of other countries (Rupnik 2002, 2000, 1999). Still other authors highlight the correlation between pre-communist economic development with reform performance in postsocialist Eastern Europe (Bunce 2003; Verdery 2000). A careful consideration of all these cases would reveal that, since this literature finds a connection between pre-communist underdevelopment and communist dogmatism during the communist monopoly of power, the communist legacy becomes an intervening variable between the pre-communist legacy and the pace of postsocialist democratization in CEE. While this discourse helps us to understand different sources of various communist traditions, only the latter bears significant relevance for understanding and explaining different postsocialist pathways.

*Nation-state building and ethnic “homogeneity”: a literature review*

Findings about the negative effects of ethnic heterogeneity in nation-building, social cohesion, and democratization remain inconclusive (Gerrits and Wolffram eds. 2005; Fish 1999; Stavenhagen 1996; Diamond and Platter 1994; Horowitz 1985; Rupnik 2002: 104). Rustow (1970), one of the earliest authors among this research corpus, has listed the settlement of national and state questions as a prerequisite for successful democratization. Nation-building is seen to be related to the legitimacy of the territorial framework of democratizing countries, and the latter clearly remains the first prerequisite for a democratic transition. Such a legitimacy is related to ethnic identity as a “supportive culture” as a prerequisite for every durable form of political system (Berg-Schlosser and Mitchell 2000: 9). Twentieth century European history seems to redeem John Stuart Mill’s (1958: 230) position of the impossibility of establishing representative governments in ethnically divided societies against Lord Acton’s (1862: 169) point that “diversity preserves liberty.”<sup>13</sup> Even the most optimistic authors note that even though cultural homogeneity (or cultural heterogeneity pacified by consociational arrangements at the elite level) might not be a prerequisite or condition for democracy, it certainly helps (Gerrits and Wolffram 2005). The debate rests, though, on whether or not the antagonism between ethnic divisions and democracy is reconcilable; according to Gerrits and Wolffram (ibid: 4) who view this issue from a historical perspective, it is (see also Newman 1996).

Kaufman (2003) views ethnic conflict as contingent upon the existence of fears of extinction by ethnic groups which are deeply ingrained in myths, politicians who want to use them for power interests, and the contextual conditions that would allow them to resort to violence. If elites are patient and committed to negotiations and political means, ethnic conflict is avoidable. However, from a rationalist perspective, it is very possible that elites that are inclined to consociational solutions would be stigmatized as being soft in protecting their ethnic groups from an imminent, perceived or socially construed, threat from other rival ethnic groups. Such politics would lead to a radicalization of the political stage and, potentially, to ethnic conflict (Shoup 2008; Diamond and Plattner 1994; Milne 1981; Rabushka and Shepsle 1972).<sup>14</sup> Whether it is a matter of political survival, as a rational choice approach suggests, or physical survival as the region’s history from the

last two centuries cautions, political leaders resort to ethnic conflict as one of their most viable options for continued political existence.

However, the relationship between democracy and ethnic conflict can also proceed the opposite way. Eastern European democratization showed that, while there are cases when nationalism and ethnic conflict undermine democratization, some of the most successful democratic experiences in Eastern Europe were not only efforts to change regimes but also to build new nations. Bunce (2003) provides the distinction between protests against the regime and protests against the state, with popular protest in both the Czech lands and Poland targeted towards the regime and the Baltic and Slovene demonstrations displayed both liberal and nationalist features. Differences exist though between countries in the northern subregion of Eastern Europe and the Balkans. Bunce (2003) explains these differences with whether the nationalist discourse preceded or succeeded regime transformation: the first case explains the Yugoslav wars; the second explains the successful stories of secession. Yet, how could the Macedonian and Czechoslovakian cases fit into this explanation? In the former, ethnic conflict erupted almost one decade after regime change; in the latter, the nationalist discourse introduced after regime change resulted in the peaceful division of the country.

Nodia (2002, 2001) tries to bring identity politics into the equation as a variable. The question, suggests Nodia (2002: 205, 2001: 31), is whether an ethnic group looks “up” or “down,” that is, whether “the other” is perceived to be better or worse than one’s ethnic group. Moreover, another powerful reference concerns whether that “other” is within the same country or another country, that is, the “outbound” versus “inbound” nationalism. The claim that democracy coincides with capitalism and its discovery by Westerners represents the source of a perceived cultural correlation between democracy and the West. Eastern European ethnic groups who look down on their fellow citizens from other ethnicities consider themselves as Westerners while perceiving the “others” as Orientals. As for the role of the outbound nationalism in democratization, Nodia (2002: 206; 2001: 32) argues, the aversion toward less Westernized neighbors might cause a country to introduce at least a minimal form of democracy. In such a case, an increase of the *mobilizational* capacity and a consensual character of nationalism might occur, embodied in the rational desire for national liberation from the domination of a backward

neighbor. However, nationalism oriented against a more modernized hegemonic country—whether or not the nationalists are willing to admit that they are looking up at their target—contains a seed of weakness (Ibid).

It is difficult, though, to reconcile Nodia's argument with some of the major existing approaches on ethnicity, namely the rationalist approach and the culturalist/structuralist approach. Let us consider Nodia's argument only in the light of these latter views. It will be difficult to sustain Nodia's argument as a combination of a "look-up/look-down" view and "inbound-outbound" perspective, since it will be difficult to find an ethnic group that would "look up" to their ethnic rivals. Unless ethnicity-molding myths echo the racial, cultural, historical, and moral superiority of that ethnic group against its ethnic rivals, there is no reason why the group itself should be created or even exist in the first place; conceivably, no one would undertake the establishment of a culturally and morally inferior ethnicity. From the rationalist perspective, Nodia's argument is irrelevant: moral and cultural features do not count as motivations in the power struggle between individuals or groups. However, although severe critiques mounted against what is called the primordialist approach from authors relying on rational choice and culturalist/structuralist approaches, beliefs about ethnicity as primordially given continue to persist (Isaacs 1970).<sup>15</sup> Therefore, as Naarden (2005: 144) suggests, assumptions of a connection between ethnic diversity and democracy will always remain "educated guesses" since "it is not possible to prove a direct and causal relationship between issues that belong to completely different categories.

This discussion bodes for caution in considering democratization in ethnically divided societies. There is evidence of both the destabilizing effects of ethnicity and nationalism and their liberating and enfranchising effects. Most of the aforementioned literature tries to build bivariate correlations, hence oversimplifying the social and historical conditions of the ethnicity-democracy nexus. Obviously, the effects of multiethnicity as an independent variable need to be analyzed in the presence of other variables; for instance, the level of social development of the country, combined with ethnic heterogeneity, might become a basic factor in establishing and maintaining democratic regimes (Berend 2005).



It has been argued that countries with statehood problems are more susceptible to international influences on their democratization process; in some ethnically divided societies, a strong EU presence limits their sovereignty (Noutcheva 2006). In such cases, EU conditionality can be more intrusive as it suggests a redefinition of statehood. The sovereignty-linked EU demands constitute an additional layer of conditionality distinct from the Copenhagen criteria requiring democratic and economic standards. Under such conditions, domestic politics hold the key to compliance with sovereignty-sensitive conditions. The presence of external actors in domestic authority structures undermines political bargaining and has an impact on the way local actors define their interests in the politically constrained space. The existence of sovereignty-linked EU conditions, however, causes the domestic political community to become very divisive and in some cases brings about serious opposition to EU demands. The political fragmentation of these societies, in turn, affects the sustainability of compliance decisions and carries the risk of non-implementation and even reversal of some reforms when a switch of the ruling elites occurs.

This argument misses two important logical ramifications: first, it downplays the capability of EU mechanisms to similarly affect all major sections of those “semi-sovereign” countries; second, the EU idea itself can serve as a unifying factor for the entire society.<sup>16</sup> If EU membership has become such a powerful attraction for Eastern European countries, as we will see in detail below, the EU can easily use that attraction to impose consociational behavior upon ethnically and politically divided elites. Moreover, it is not clear how much of an additional layer from the Copenhagen criteria sovereignty-linked EU demands would be; it is easily perceivable that reforms aimed at improving socio-economic conditions of marginalized ethnic groups cannot but help improve those conditions for the entire society. And finally, a more detailed and perhaps less politically correct conceptualization of the nature of EU leverage would help in better understanding EU success in taming ethnic conflicts in some Eastern European countries.

#### *Elites and Masses in Democratization*

One of the major challenges that the democratization literature of the 1970 and 1980s experienced with the revolutions of the late 1980s in Eastern Europe was mass

mobilization. Differently from models suggesting elite pacts, some of the most successful transitions in Eastern Europe began with mass mobilization (Mastnak 2005; Bunce 2003; Smolar 2002). Mass mobilization forced elites to negotiate, increased the leverage of opposition leaders outside the system and reformatory forces within the system, radicalized the negotiation agenda, and legitimized promises and subsequent radical policies for political and economic transformations (Bunce 2003). However, as that literature suggests, since mass mobilization emerged out of the need to overthrow the old regime, the vanishing of the former might also mean the curb of mass mobilization altogether. Indeed, the rapid demobilization of postsocialist societies returned research focus to the role of elites in postcommunist politics—especially during the democracy consolidation phase—by pointing to elites’ ability to prioritize their power-driven interests.

Arguably, the international factor remains one of the most relevant causal factors of the Eastern European democratization experience. One of the thorniest issues in EE democratization process is the relationship between power-driven elites and international actors interested in the region’s democratization. Some authors assert that the former outweighs the latter (Saideman and Ayres 2007; Brusis 2005). However, there also exists the view that postcommunist leaders tend to display a tendency to embrace normative behavior and position themselves in student-teacher relationships with IOs which they aspire to join (Gheciu 2005). This argument rests on the conceptualization of postsocialist transition as continuity rather than a revolutionary break with the communist past. In such a case, the inter-elite struggle might be less severe due to an inter-elite pact and an acceptance of norms of electoral competition and either power sharing or peaceful power rotation. However, such results can be achieved only under circumstances of moderate elite continuity; in the Soviet Union and Balkans, the high levels of elite continuity have undermined democratic reforms (Higley, Kullberg, and Pakulski 2002; Reisinger 1997). Other authors (Balcerowicz 2002; Laar 2002), being aware of the perils of elite competition in periods of “ordinary politics,” call for key reforms during periods of “extraordinary politics” that immediately succeed regime change.<sup>17</sup> In order to shield reformatory elites from electoral backlashes caused by the harshness of radical economic reforms, Laar (2002: 79) suggests beginning the postsocialist transformation with

political reforms; only a legitimately formed consensus for change achieved through accountable democratic structures and free and fair elections could make a country adhere to reforms despite the short-term pain they bring.

While it is not difficult to notice historical differences throughout the socialist and postsocialist world, postsocialist societies resist giving up their similarities (Howard 2003; Rose, Mishler, and Haerpfer 1998; Mishler and Rose 1997; Rose 1995). These persisting similarities puzzle us whether we need to begin our research from elites, institutions or masses. Such a need to define our ontological approach bears epistemological import since it represents our basic assumptions on how society works. It also bears methodological ramifications since, in order to assess the effects of the international dimension of Eastern European democratization, a sample that includes a sufficient number of cases from countries coming from different historical legacies would suffice to establish a credible comparative ground even though the similarities among Eastern Europeans continue to persist.

### **The International Dimension of Democratization in the Contemporary Literature**

Most of the democratization literature developed during the 1990s followed and further built on Huntington's (1991) research question: what are the major causal factors/mechanisms that lead to the toppling of authoritarian/dictatorial regimes and create opportunities for democratization? A major breakthrough of that literature was a renewed emphasis on the international dimension of democratization, an element only reluctantly tackled by the democratization literature of the 1980s (Janos 2005: 95; Pridham 2000: 286; O'Donnell and Schmitter 1986; O'Donnell, Schmitter, and Whitehead eds. 1986). The literature of the 1990s discussed regime change and democratization not only as mere outcomes of domestic causal factors. Theories regarding the international environment's impact on such events and processes unveiled the role of international actors and organizations (IOs) in domestic affairs. This literature reflected the unparalleled and apparent impact of international factors on Eastern European democratization (Rupnik 2002, 2000, 1999).

Traditionally, mainstream literature building on the rational choice assumption has dominated studies of IOs' impact on domestic politics. Whether from an institutionalist

angle such as Gourevitch's (1978) second image reversed or from Putnam's (1988) two-level game and Goldstein's (1998, 1996) tying-hands approach, this literature assumes that leaders pursue a rational quest for attaining and maintaining power. However, democratization theorists are divided on the nature of the international actors' tools to expand and impose their preferences. Thus, Schmitter (1996) maintains that international actors enforce democratization by rational, deliberately communicated, demands. Developing this argument further, Pevehouse (2002: 519-520) has identified three potential causal mechanisms through which IOs can influence regime change: first, pressure generated from these IOs in combination with internal forces; second, the acceptance of liberalization by certain elite groups; and third, liberalization either through hand-tying or socialization of domestic elites. Pridham (2000: 298) points out that this enforcement is not deliberately sent to recipient countries, but is a democratic spillover from international democratic institutions to democratizing countries. The flow of democratic values from democratic to democratizing countries occurs only because, through that spillover, democratic countries reassert their democratic identity.

Whitehead (1996: 5-22) has pinpointed two other mechanisms by which democratic principles can be unintentionally transmitted and/or intentionally enforced: *contagion* and *control*. Democratization through contagion does not imply any enforcement; it just leaks through borders within a predefined region. Control might be seen in Whitehead's (1996:8) metaphor "as a vaccine," an intentional imposition of democratic norms, rules, and principles on democratizing countries by another power; it does not exclude military intervention even though this may not necessarily generate the best results. Schmitter adds *conditionality* to these mechanisms: the term implies the stipulation of membership preconditions from IOs to countries that aspire to join these organizations. Although coercive enforcement is always undesirable, this method creates the best incentives for inter-state and intra-state negotiations and bargaining, brings to the forefront different domestic actors with different inclinations, sets up compromises, and generates what Whitehead (1996:15-22) calls *consent* and Pridham (2000) calls *convergence*. While Pevehouse's mechanisms are perceived to be consecutive steps toward regime change and Pridham's democratic spillover rests as a causal mechanism isolated by other domestic and international factors, contagion, control, consent and

conditionality are perceived to work both concomitantly and independently, thus allowing their study as both collinear and independent causal mechanisms.

Schmitter (1996: 30) defines conditionality as “the deliberate use of coercion—by attaching specific conditions to the distribution of benefits to recipient countries—on the part of multilateral institutions.” Differently from control and contagion which are mainly produced by unilateral actors’ policies, conditionality emerges from multilateral international relations, allegedly from international organizations. In contrast to contagion and consent, which are results of voluntary actions of democratic states often supported by private actors, conditionality explicitly involves coercion backed by IO member countries. However, while in Schmitter’s concept these notions are sharply divided, the borderline between them might be less clear. Thus, simply using Whitehead’s metaphor, isn’t vaccine a weakened bacteria with the mission of artificially inducing physiological reaction by producing antibodies, hence, isn’t control an attempt to impose contagion? Furthermore, isn’t consent an effect that ought to be acquired, hence a dependent rather than an independent variable? And finally, isn’t conditionality a form of control over democratizing societies which have consented to take the vaccine despite their initial pain?

The purpose of these questions is to focus only on conditionality. Unless we are interested in meticulously probing into seemingly inseparable contagion, control and consent, the study of conditionality can help us to uncover the aggregate effects of these factors. Increasingly used during the last three decades as a political tool more consistent with international norms than direct control, with much sharper expectations than the blurry contagion, conditionality continues to generate foreign policies and academic research. While such an increasing preference shows a growing consensus that conditionality yields results, the controversies that conditionality stirs causes politicians to appeal for corrections. As we attempt to unveil its causality, we need to focus on the goal of conditionality: changing the political behavior of political actors, be they political leaders and/or institutions, according to the wishes of those who dispatch the political conditions.

### **From Political Conditionality to EU Membership Conditionality**

Initially, the notion of conditionality was related to attempts made by international financial institutions (IFIs) to change the political behavior of developing countries which required international financial support in their structural adjustment efforts. The notion emerged around the early 1980s from a study of the World Bank that suggested placing conditions on African countries for disbursement of financial aid to assist them with the implementation of economic liberalization reforms (World Bank 1981). The policy reflected consensus among the Bank's major donors that economic success depends upon open market and liberal economic policies. Moreover, these prescriptions acquired an institutional dimension past that decade with the World Bank advocating the need for institutional reforms in recipient countries in order for them to successfully implement economic reforms, thus emphasizing the need for good governance as a *sine qua non* for economic development (World Bank 1997, 1996, 1992, 1989).

Scholars of development policies have mainly focused upon whether or not foreign financial aid helps promote economic growth and whether conditions placed by the IFI have been effective in generating policy change in recipient countries (Spraos 1986; Bartilow 1997; Santiso 2001; Buliř and Lane 2002; Vreeland 2003). Indeed, with mixed empirical results, this literature has often been embedded in ideological arguments (see for instance Hibou 2001, 1998; Easterly 2006, 2002; Stiglitz 2002; Bhagwati 2005; Sachs 2005). This body of literature is characterized by four different yet related debates: first, whether or not conditionality works (Easterly 2006; 2002; Vreeland 2003; Buliř and Lane 2002; Stiglitz 2002); second, whether domestic or international factors are the main determinants of reform success (Easterly 2006; 2002; Sachs 2005; Buliř and Lane 2002; Stiglitz 2002; Santiso 2001); third, how conditionality affects different domestic constituencies; and four, whether we can really speak of conditions at all (Hibou 2002; Bartilow 1997).

Much of this *problematique* haunts EU membership conditionality as well. The latter implies the set of conditions imposed by the EU on membership aspiring countries; the conditions include stipulations for implementing reforms and pursuing policies in the direction prescribed by the EU. Initially, the EU applied membership conditionality in the wake of its second expansion which included Greece in 1981 and Spain and Portugal in

1986. Yet, in these cases, although a statement by the Copenhagen European Council warned the new applicants that “respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities,”<sup>18</sup> little attention was actually given to the democratic institutions; the focus instead was on applicants’ economic performance (Malová and Haughton 2002: 103; Smith 2003: 110).

European identity, democratic status, and respect for human rights were laid out initially at the Lisbon European Council of June 1992 as conditions for membership. Yet, the European Commission did not further elaborate upon these criteria. Instead, they turned their attention to shielding the achievements of the European Community (EC) from potential dangers stemming from enlargement (Smith 2003: 112). While in the cases of Greece, Spain, and Portugal the EC did not apply membership conditionality consistently and political considerations won over its strict imposition (Smith 2003: 110), when it came to the latest wave of expansion, however, the European Commission insisted that applicant countries had to accept the existing EC system, the *acquis communautaire*, entirely and without opt-outs (Smith 2003: 112). From here, the Commission suggested conditional policies toward new applicants mainly to preserve the existing achievements of the Union, as well as to ensure its further integration and enlargement: “widening must not be at the expense of deepening. Enlargement must not be a dilution of the Community’s achievements.”<sup>19</sup>

Finally, EU membership conditionality took shape at the EU Copenhagen European Council, June 1993. It focused on the economic and institutional adaptations that EU membership aspiring countries needed to perform in order to meet the EU criteria. Such conditions required the applicants to: (1) build a functioning market economy with the capacity to cope with competitive pressures and market forces within the EU; (2) ensure the stability of institutions established to guarantee democracy, the rule of law, human rights, and respect for and protection of minorities; and (3) bolster capacity to take on obligations of EU membership including adherence to the aims of economic and political solutions. Later, the Luxembourg European Council, December 1997 recognized the strengthening and improvement of the operation of the institutions in the aspirant countries as a prerequisite for the enlargement of the Union.<sup>20</sup>

Meanwhile, the European Commission's Agenda 2000 aimed at sharpening the very general notion of "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities" by defining a functioning democracy as a political entity with: (1) a constitution that must guarantee democratic freedoms, such as political pluralism, the freedom of expression, and the freedom of religion; (2) independent judicial and constitutional authorities; (3) stable democratic institutions permitting public authorities (including police forces, local government, and judges) to function properly; (4) the ability to conduct free and fair elections and recognize the role of opposition; (5) respect for fundamental rights as expressed in the Council of Europe's Convention for Protection of Human Rights and Fundamental Freedoms (including acceptance of the protocol allowing citizens to take cases to the European Court of Human Rights; and (6) respect for minorities, which includes adaptation of the Council of Europe's Framework Convention for the Protection of National Minorities, and Recommendation 1201 of the Council of Europe's Parliamentary Assembly.<sup>21</sup> Meanwhile, the practical implementation and scrutiny of the fulfillment of EU conditions were included with the framework of the Accession Partnership (AP) of 1998 and the Stabilization and Association Process (SAP) of 1999.

EU membership conditionality can be defined as the set of conditions sent from the EU to EU membership aspiring countries for implementing reforms and pursuing policies in the direction prescribed by the Union. Applied in the Balkans, EU membership conditionality serves as a multidimensional and multi-purpose instrument geared toward reconciliation, reconstruction and reform; it is regional, sub-regional, bilateral and project-specific and relates to economic, political, social and security-related criteria (Anastasakis and Bechev 2003). Arguably, these negotiations concern the process of preparation for EECs to join the EU and are not about give-and-take, hence CEE applicants have little power to argue against EU demands, given that there is a pre-set EU agenda on which aid is already conditional. The Accession Partnership presents conditions as a package that is difficult to take apart in negotiations (Grabbe 1999: 19). The pre-Accession Partnership and pre-Stabilization and Association Process negotiations show that CEECs should fulfill some prerequisites in order to be involved in negotiations with the EU; they must demonstrate political will toward the reforms. On the other hand,



as it has been argued, these programs rest on the assumption that EU accession and EECs' transition to democracy and market-oriented economy are part of the same process and preparation to join the EU is conterminous with overall development goals (Grabbe 1999: 4). Moreover, the EE elites and public view post-communist transformation as the complex process of the "return to Europe," a concept that weaves together the processes of democratization, marketization, and Europeanization (Henderson, ed. 1998; Dimitrova 2004: 4).

There are two views of the purpose of EU membership conditionality. The first one, called the demand-side viewpoint, tends to see conditionality as mainly concerned with minimizing the risk of new entrants becoming politically unstable and economically burdensome to the existing EU members. These conditions serve to minimize the risks and costs of enlargement (Grabbe 1999: 4; 2002). On the one hand, the EU has considerable achievements to be protected; on the other, the enlargement discussion found itself interlinked with a deepening discussion. As the number of member states expands, the fear exists that size will matter: it will be much more difficult to agree to extend either the scope of integration (adding new policy areas to the process) or the level of integration (such as increasing the use of qualified-majority voting) (Smith 2003: 106-107).

The second group of scholars tends to view EU conditions from the supply-side approach. For them, EU conditions and the programs attached to them provide material support for implementing reforms (Moravcsik and Vachudova 2005); shield moderate politics from populism and nationalism (Vachudová 2001: 5); strengthen democratic forces in the face of authoritarian downturns (Scimmelfennings 2007); and serve as instrumental justification for domestic policies that Eastern European leaders need to implement to attain their own rational, power-driven goals (Brusis 2005). Its framework provides EU membership aspiring Eastern European countries with political and economic objectives and guidelines for achieving these objectives. All in all, the possibility of membership in the EU has created powerful incentives as transition states shape their reforms (Pridham 1994; Smith 1997; Kubicek 2003).

Recognizing EU membership conditionality as the most powerful instrument available to the EU in dealing with candidate and potential candidate countries

(Anastasakis 2008; Anastasakis and Bechev 2003), some authors credit an obvious asymmetry of interdependence in EU conditionality as an important factor that enables the latter to be effective (Knorr 1977: 102; Grabbe 2003; Hughes, Sasse, and Gordon 2003a, 2003b: 70; Dimitrova 2004: 8). This asymmetry stems both from the fact that EECs consider EU membership their highest foreign policy goal, thus putting the EU in a strong position to influence the internal politics of these countries (Kopecký and Mudde 2000: 532) as well as the generally low public support for enlargement in current EU members and candidate countries (Cameron 2003: 30-40). The economic and political benefits gained by EE leaders, the lack of equivalent alternatives for post-communist EECs, and the weak interest of the EU in eastward political enlargement make EU membership conditionality a particularly powerful tool in the hands of the EU during its negotiations for eastward expansion (Brusis 2005: 296; Janos 2005: 118). There exists mistrust among EU member states towards EECs knocking at the EU's doors.

In contrast, Eastern Europeans, captured by the return-to-Europe psyche, perceive a link between democratization and accession to the EU (Peshkopia 2008a; Dimitrova 2004: 3). Whereas EU member states and EECs will both benefit from EU enlargement, new members are expected to benefit more, thus putting the latter at a disadvantage in bargaining (Moravcsik and Vachudová 2005: 201; 2003: 44). Grabbe (1999: 19) argues that, since the negotiations are over the process of EE preparation to join the EU and not about give-and-take, EE applicants have little power to argue against EU demands, especially given that there is a pre-set EU agenda on which aid is already conditional. In addition, the AP presents conditions as a package which is likely to be difficult to separate in negotiations. Generally, this literature agrees that such a power asymmetry causes strong convergences of EE policies with the EU and also a greater domestic convergence toward such policies compared with the current EU member countries (Grabbe 2003).

There is a strong rationale for the Eastern European countries to ask for and/or accept Western assistance: the possibility of membership in the EU has created powerful incentives as transition states shape their reforms (Pridham 1994; Smith 1997; Kubicek 2003). The reforms conditioned by the EU shore up democratic standards, improve the functioning of the state, and increase aggregate economic welfare (Moravcsik and

Vachudova 2005: 199). On the other hand, the fact that the prospect of membership of the Balkans into the EU remains distant weakens the strategic effectiveness of EU conditionality as an instrument of influence for the EU (Anastasakis 2008; Anastasakis and Bechev 2003), especially when combined with the lack of tangible benefits such as liberal visa regimes (Ilijani 2006). By the same token, the EU is increasingly facing the dilemma that its instruments do not provide incentives sufficient for reforms (Hoffmann 2005). However, even when membership is available, purely external leverage may be insufficient to bring about the required domestic changes (Flynn and Farrell 1999).

Critically, a widely shared argument of the Europeanization literature maintains that EU conditions are not able to produce convergence in domestic policy structures and institutions but rather result in “domestic adaptation with national color” (Dimitrova 2004: 7; see also Héritier 2001; Risse, Green, Cowles, and Caporaso 2001). Yet this argument cannot help to explain why, in some cases, EU conditionality works and has been able to elevate EE policies and institutions to levels required by the EU (Peshkopia 2005a,b,c,d). A plausible answer might be the inaccuracy of considering EU conditions as a whole package, without parsing out specific conditions in various sectors. The holistic view of EU conditionality bears the dilemma of whether the reform results are the best EECs can achieve in situations created by lack of resources and human capabilities or whether CEE leaders purposely distort EU standards in order to produce policies that would help them to maintain power.

The often vague EU goals that cite a need for “increasing capacity” or “improving training” rather than stating detailed institutional preferences (Grabbe 2001) leave room for EE leaders to maneuver and make tradeoffs between their countries’ development agenda, their own rational power-driven preferences, and the priorities imposed by the EU. Thus, since “the EU’s advice is specifically designed to promote particular aspects of governance rather than taking a holistic view of how administration should develop” (Grabbe 2001: 1023), EE leaders have a wide range of opportunities to negotiate—and define—not only the shape of their institutions but also the timing of their reforms, resources allocated to them, and their impact on the life of the country. As O’Dwyer (2006: 221) puts it, despite the incentives that stem from significant development aid from the EU when EEC comply with EU conditions, “the practice of regional governance

reform in EE has proven much more elastic than the Europeanization hypothesis' prediction of convergence would suggest." In the case of the Balkans, EU emphasis on conditions vary from rigorous assessments of compliance to more adaptable and pragmatic assessments for the sake of preserving peace and avoiding security risks, thus affecting the consistency of the process (Anastasakis 2008). Moreover, although the asymmetry of interdependence allows the EU to set the rules of the game in accession conditionality, the candidate countries have an opportunity to temper to some extent the impact of the EU's influence in the way they implement the *acquis* (Grabbe 2003: 318).

The range of that opportunity might be widened by the fact that, as some authors have argued, conditionality only works as a carrot, not as a stick, hence, rewards for compliance are effective but simple whereas noncompliance with EU conditions causes only exclusion from external resources and delay in accession (Schimmelfenning 2007: 127; 2005: 833; Grabbe 2003: 317). This particular feature of conditionality opens room for EE leaders to maneuver within the area between compliance and delays, while implementing policies built around their own rational goals. It is already clear that, in the condition where accepting carrots is more rewarding than delaying, EE leaders will comply with EU conditions. From here stem reforms that have been implemented because of the desire to become an EU member rather than from a genuine support for the goals themselves (Kopecký and Mudde 2000: 532; Gerskovits 1998). Obviously, we need some re-conceptualization of the "carrot-versus-stick" notions, as well as better differentiation of what "carrots" and "sticks" are.

There is much more to EU membership conditionality than the EU simply counting how membership aspiring countries have scored in reforms. EU membership conditions are unavoidably elastic, consequently creating room for EE leaders to maneuver in their accession negotiation with the EU and thereby employ strategies to circumvent conditions or water down EU prescriptions, thus performing incomplete reforms. One of such strategies is the delay in keeping promises. Accordingly, EE leaders might make rhetorical commitments and not live up to them.<sup>22</sup> Moreover, sometimes policy-makers may be slow in implementing EU-inspired reforms if they do not fit well with other demands and if they feel that there is time to implement them later (Grabbe 2001: 1016). Thus, there is a growing gap between word and deed among EU

membership applicant countries, which is a source of constant frustration in Brussels (Checkel 2000: 7; Grabbe 1999). A careful analysis of the EU-EEC negotiation process would help explain these discrepancies from both individualist and institutionalist perspectives. Consequently, as Brusis (2005: 298) points out, the explanatory power of EU conditionality is limited only to those cases where the EU prescribes determinate rules that might then be transposed or rejected by an accession state. Narrowing the process of EU-EEC negotiation over accession as merely checking a list of homework accomplishments would take the focus off important parts of accession politics' dynamic. Hence, we must refocus on assessing important institutional reforms that have been left outside the conditionality package or have attracted only soft and inconsistent recommendations from the EU.

EU membership conditionality raises uncertainties that affect EU-EECs interaction during the process of EECs preparation for EU membership. According to Grabbe (2003: 318-23), there are five dimensions of this process: (1) uncertainty about the *policy agenda* that should be undertaken by applicants stemming from the fact that tasks have not yet been fully determined for member states either; (2) uncertainty about the *hierarchy of tasks* thus leaving CEECs following EU's frequent shifts of priorities; (3) uncertainty about timing, stemming from a big gap between the period of reforms and the time when EU membership will be acquired; (4) uncertainty about *whom to satisfy* (the latter is characterized by its short term dimension—thus leaves EE leaders guessing who are the actual veto players in the EU and what are the priorities they push—and the long term dimension—that makes EE leaders puzzled about who will be the next emerging veto players and what will be their priorities); and finally (5), there is uncertainty about standards and thresholds, this can leave EE leaders puzzled over what counts as meeting EU conditions, uncertainty that rises out of the EU's blurry and difficult to measure definition of progress toward accession. These thresholds, or at least EE leaders' perception of them, play an important role in reform performance, especially in areas where EU's and EE leaders' interests and rationales clash, but also increase ambiguities about EU expectations from EECs. These ambiguities become an area of intense negotiations because, on the one hand, it allows the EU, according to the emerging communal and/or major actor interests, to tighten or relax certain conditions; on the other

hand, it leaves EU membership aspiring countries with “considerable discretion over their implementation policies” (Brusis 2005: 298).

Most of the debate related to EU membership conditionality is over whether or not it works. Authors are divided among those who cautiously count conditionality as the primary factor that drives policy changes in CEECs (Grabbe 2001, 2003), those who admit that membership conditionality works under certain conditions (Schimmelfenning 2005; Kelley 2004a,b), and those who argue that it is secondary to either domestic structure composition or to domestic leaders’ power calculations (Saideman and Ayres 2007; O’Dwyer 2006). On a slightly different note, Malová and Haughton (2002) point out cases when reform outcomes are results of domestic politics’ dynamics, while in other cases they are results of pressures from the EU. Elsewhere, I have contributed to the argument that the effects of EU membership conditionality are contingent upon a tug-of-war between domestic, EU, and EU member countries’ leaders who perceive the outcomes of reforms in CEECs as a means to promote their power-driven interests (Peshkopia and Imami 2007). Cautioning against the vagueness of the political message sent by the EU to the EU membership-seeking Balkan countries, some authors point out that conditionality can function successfully only as one element in a well-defined relationship with the Balkan states; therefore, it is essential to establish clear links between the reform process and its outcome, between conditionality and the objectives it is geared toward, including EU accession (Anastasakis and Bechev 2003). Usually, this research corpus tends to measure the effects of EU membership conditionality against accession, thus considering as failures cases when countries have been accepted in the EU without fully complying with the conditions imposed upon them. Against such an approach, one should heed Dimitrova’s (2004: 1) warning that the moment of entry [to the EU] is only one stop along a long road to transformation for the new members.

Therefore, the aforementioned categorical evaluations suffer from two major problems. First, they overlook the major purpose of EU membership conditionality, that is, successful transformation in the CEECs with EU accession only a distinct milestone rather than an ultimate end. Second, they lack a scale of measurement and do not account for reform progress in cases where EU membership conditionality is absent or the EU factor appears only as a set of loose and soft recommendations. In addition, in a typical

biased interpretation, authors often downplay or circumvent policy sectors where conditions are fulfilled. Hence, most of the literature so far has missed the main question: does EU membership conditionality help the EU membership aspiring countries become more democratic? In other words, does EU membership conditionality minimize the risk of new entrants becoming politically unstable and economically burdensome to the existing EU members? Does it shield moderate politics from populism and nationalism? Does it strengthen democratic forces in the face of authoritarian downturns? At a glance, we can see that the ten new EU entrants from Central and Eastern Europe had already minimized the risk of becoming politically unstable before their accession, have shielded moderate politics from populism and nationalism, and have strengthened democratic forces in the face of authoritarian downturns. Yet, the jury is still out as to whether this progress is made because of the conditions imposed by the EU, these countries' willingness to progress in the direction prescribed by the EU even without such a prescription, or a combination thereof. Putting the problem in the wider framework of the international dimension of democratization, Pridham (2000: 286) questions whether these [international] factors might be a dependent variable or not; or perhaps the external environment can in its different forms impose a set of confining conditions for internal regime change.

Paralleling Vreeland's (2003: 7) assertion that assessing performance of the countries involved in IMF programs entails understanding IMF selection of countries to participate in such programs, one can ask: why does the EU impose certain conditions only upon some of the countries that aspire to its membership and not upon others? Is EU membership conditionality an exogenous factor that leads those countries toward democracy and economic development, or is the political will of those countries toward institutional and economic reforms the factor that encourages the EU to offer them membership, hence triggering membership conditionality? It is difficult to distinguish whether and to what extent the progress of CEECs toward democratic reform and the market economy is a result of their efforts toward democracy and economic development or EU membership conditionality. In other words, the EU engages in membership conditionality only those countries that manifest willingness to develop in a direction

compatible with the EU policy prescription; on the other hand, it has been widely argued that Eastern Europe emerged from communism by following the EU model.

## Conclusions

This review of the existing literature on consociational democracy, EE democratization, and EU membership conditionality shows the potentials of consociationalism as an overarching theoretical framework for explaining both EU internal integration and its eastward expansion as a process of expanding its model of stable democracy. The exercise also highlighted the actors and factors interplaying in EE democratization reforms as well as the role of EU membership conditionality as a democratizing factor in EE countries aspiring to join the Union. This review demonstrates on the one hand the conjunctures of these sets of literature, and on the other, the conceptual efforts needed to make them work together organically. Namely, it showed that we need a reconceptualization of consociational theory as an elite theory of democratization by highlighting its explanatory character and discarding its tautologies along with its normative claims; we can use this re-conceptualized theory to explain EU eastward enlargement as an expansion of the very consociational practices that have molded the EU as a stable democracy. We can apply this theoretical framework to explain the dynamics of EE institutional reforms as the outcome of a tug-of-war between EU conditions and domestic leaders interests to reform institutions in a way that would maximize their political benefits. This is the task of the following chapter.

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<sup>1</sup> Lijphart (1969: 207) himself called it a “research note.”

<sup>2</sup> Ironically, the “primordialist” surge that would undermine the structuralist trend in democratization theories of the 1950s and 1960s was a structuralist argument, proposed by the French structural anthropologist Clifford Geertz in his book *Old Societies and New States*. As such, it is at odds with the direction of the new research program, hence elite voluntarism.

<sup>3</sup> Among them, Lustick mentions Lehmbruch’s (1967, 1968) “concordant democracy,” Bluhm’s (1968) “contractarian democracy,” Val Lorrain’s (1962) “vertical democracy,” and his later (1969) “segmented pluralism” (cf. Lustik 1997).

<sup>4</sup> As Almond (1956) divided democracies between “stable democracies” and “immobilist democracies” he also categorized the former into two sub-classes: one of them comprised countries of the Anglo-American system (Great Britain, the United States, and the old Commonwealth); and the other, the stable multi-party democracies of the European continent—the Scandinavian [*sic*] and Low Countries and Switzerland. Almond clustered the other European democracies into his “immobilist democracy” category. These



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categories were defined by simply structuralist-culturalist features; the former focusing on a differentiated role structure as related to political aggregation functions in society and exemplified in the aggregative nature of some parties in the Scandinavian and Low Countries' political system; the latter focusing on elements such as society's homogeneity and its degree of infusion with secular and traditional elements.

<sup>5</sup> As we'll see later, this is one of the biggest problems with the consociational literature.

<sup>6</sup> As Van Schendelen (1985) points out, Lijphart's early notion of consociational democracy considered consociationalism as a specifically Dutch phenomenon (cf. Lustick 1997: 108).

<sup>7</sup> For instance, Jimmy Tindigarukayo (1989) has added to Lijphart's list of favorable factors popular legitimacy of the ruling elites, respect for institutional rules and procedures, compromise, trust and good will among political leaders. Studying the absence of consociationalism in the Sri Lankan case, Chehabi (1980) adds three more factors: militant Sinhala nationalism, economic rivalry, and the constitutional framework (cf. Bogaards 1998: 482). Adriano Pappalardo (1981, 1979) adds three more conditions as both necessary and sufficient for the establishment of consociational democracy: stability among subcultures, elite dominance, and leader-follower relationships.

<sup>8</sup> Throughout his article, Lustick refers to the Hungarian mathematician and philosopher of science Imre Lakatos within two periods of his intellectual activity: early-Lakatos criteria as being more concerned with "progressive iterations of testable and increasingly robust explanatory claims with a stable framework of presuppositions and definitions; and late-Lakatos criteria as being concerned more with effectiveness in meeting the goals, whether personal or political, of leaders of the research program."

<sup>9</sup> Andeweg 2000: 515), for instance, wraps up his statement on this issue with a single sentence: "If the European Union is a case of consociationalism at all, it cannot be regarded as a consociational democracy."

<sup>10</sup> Howard (2003: 3) uses the "tabula rasa" notion differently, namely as a tendency to study postsocialist transitions by "ignoring the crucial historical and cultural context of communism."

<sup>11</sup> For a more thorough assessments of different definitions of "communist legacies" see Ekiert and Hanson (2003).

<sup>12</sup> The debate over cultural factors in democratization has already taken ideological—hence simplistic—dimensions ever since Huntington's *Clash of Civilizations* (1996, 1993), following arguably as much of an ideological tradition earlier established by Bernard Lewis (1990)—and so harshly criticized ever since (see Said 2001). The cultural argument swings from the geographical coincidence (Mandelbaum 1996) to the religious affiliation of population in democratizing countries (Nodia 2002, 2001, Rupnik 2002, 200, 1999). In trying to support his "Estonia-Turkmenistan gap" thesis, Nodia (2002: 203, 2001: 29) notes that

In the former USSR, as elsewhere, democracy has fared better in countries that are culturally "Western" than it has in countries that are not. If we take "the West" to coincide with the world of "Western Christianity," then only the Baltics among all the post-Soviet states belong to it—and they are the only ones that we can now confidently categorize as "consolidated democracies." Those that belong to Eastern Christianity (Orthodox Russia, Ukraine, Moldova, Georgia, Apostolic Armenia) cannot be called democracies in the full sense. Each is either a flawed democracy or a relatively mild autocracy.

This is a position also reverberated by Jacques Rupnik (2002, 2000, 1999). However, Bruno Nardeen (2005: 144) criticizes this approach as simple and prejudicial. According to him,

The selection of Eastern Christianity as the main cause of everything that is presently wrong in the East is only the latest product of a long western tradition of prejudiced opinion about this area. As has happened often before, one particular element of reality was disproportionately enlarged because it had to function as a comprehensive explanation for actual and complex developments.

<sup>13</sup> This position has been reverberated by French liberal sociologist Elie Halévy when, in a lecture delivered at Oxford in 1920, he questioned the wisdom of redrawing the map of Europe exclusively on the basis of the principle of nationalities. As he pointed out: "Simple ideas are revolutionary ideas and lead to war" (cf. Rupnik 2002: 134-5).

<sup>14</sup> Brian Shoup (2008: 2) calls such politics "outbidding," that occurs "when more extreme opposition parties can make promises to their ethnic constituents (such as promising to expropriate wealth from

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economically powerful groups) that a more moderate government cannot make because the opposition, unlike the government, is not in the position of having to compromise with other ethnic groups.”

<sup>15</sup> Stavenhagen (1996: 19-20) critically assesses the primordialist approach as follows:

According to some scholars [...] the ethnic phenomenon is as old as humanity itself. From primordial times, the various nomadic or agriculturalist people around the world were said to be identified by name, language, customs, beliefs and territorial origin. And though many have disappeared or become transformed, others persisted over the centuries, identified as such from generation to generation. Ethnic identity or ethnicity, it is argued, expresses primordial, affective, deeply rooted sentiments of the human beings. It is said that the identification of the individuals with their group expresses some basic, innate human need, similar to that of life in the family. In fact, a number of authors refer to ethnicity as a kind of kinship and to the ethnic group as an extended kin group. Kinship might be a real bond, based on blood ties, when descent from common ancestors can be traced. But usually it is fictitious, deriving more from shared beliefs about supposed common ancestry. Founding myths and stories are passed on from generation to generation and strengthen bonds and identities of those who hold them dear.

<sup>16</sup> An assessment of Macedonia's progress toward EU membership, Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE), notes that “[t]he prospect of EU integration is a particularly potent tool for citizenship based state- and nation-building in Macedonia as EU accession finds support among all the ethnic groups within society.”

<sup>17</sup> Interestingly, both Balcerowicz and Laar come from politics. Balcerowicz was Poland's Deputy Prime Minister during the 1989-1991 and 1997-2000 periods; Mart Laar was prime minister of Estonia during 1991-1994 and 1999-2002 periods.

<sup>18</sup> Copenhagen European Council, April 7-8, 1978. “Declaration on Democracy,” EC Bulletin No. 3 (1978): 6. The important element, it is held, is that even if kinship is fictitious, the members of an ethnic group assume it as it were real.

<sup>19</sup> European Commission, “Europe and the Challenge of Enlargement,” EC Bulletin Supplement 3/92: 14.

<sup>20</sup> Luxembourg European Council, “Conclusions of the Presidency,” Dec 12-13, 1997, DOC/97/24: 2.

<sup>21</sup> European Commission, “Agenda 2000: For a Stronger and Wider Union,” EU Bulletin Supplement 5/97.

<sup>22</sup> As some authors have noticed, “what representative actors and political entrepreneurs say is different from what they believe, and what they do is again different from both of these” (Elster, Offe, and Preuss 1998: 17).

### CHAPTER III

#### A SECTORIAL CONTEXTUAL APPROACH TO THE EFFECTS OF EU MEMBERSHIP CONDITIONALITY ON EASTERN EUROPEAN INSTITUTIONAL REFORMS

I study the dynamics of Eastern European (EE) reforms as an outcome of political actions of domestic leaders under the pressure of European Union (EU) membership conditionality. These developments suggest the need for a cross-level analysis considering EU institutions and EE leaders as the primary actors on the political theatre. There exists ample evidence in favor of claims raised by institutionalist authors that the highly structured EU imposes strict constraints on its leaders as well as member countries. However, a different approach concerning the loosely institutionalized EE decision-making environment is needed (see for instance the *Tabula Rasa* argument of Elster, Offe, and Preuss (1998)). In these societies, traditionally low regard for institutions and the highly *voluntaristic* political style of communist elites suggest that the main actors in reforming postsocialist countries are not institutions but leaders, whom I assume to be rational actors with clear power driven interests.

Epistemologically, the assumed rationality of the EE leaders derives directly from methodological rationality. “Leaders’ need to attain and maintain power” means that reforms which improve their chances to power are more preferred than reforms that do not improve their chances to power, and the latter are more preferred than reforms that hurt their chances to power. Even though this view simplifies leaders’ human nature, it can serve as a powerful assumption of leaders’ motivations especially in loosely institutionalized societies, under the conditions of scarce domestic norms, and when leaders’ appropriation of certain political behavior as proposed by international organizations (IOs) might have not occurred and/or consolidated yet.

Assuming EU motives behind policy preferences requires more elaboration since the highly institutionalized EU political environment suggests that leaders’ quest for power is always under constant checks and constraints from institutions that are able to set their own agenda, and norms that allow little maneuvering. Logical consistency requires

us to assume EU leaders as rational as the EE ones. Yet, presumably, the bitter European political experience of the twentieth century has made their rational quest for power search for other ways of attaining it. Rationally, European leaders reach the conclusion that democratic stability would be better for their political careers. Institutions and norms were established to achieve and consolidate such a democratic stability, and consociational practices are employed to establish and run those institutions.

My argument has two elements. First, I elaborate the existing conceptualization of the EU as built on consociational practices by claiming that the same practices guide the EU eastward enlargement. The new members should be acquainted with these practices and prepare to adopt quickly in an institutional setting built and run by such practices. The institutions of the EU membership aspiring countries should be shaped in a way that they can easily and quickly adjust within the EU institutional setting. Therefore, EU membership conditionality can be seen as a set of policies that condition the EU accession with the implementation of policies that lead to institutions receptive to EU's consociational practices. This process is simpler in EU membership aspiring countries with unified societies as the domestic homogeneity helps them arise as unified pillars within the Union. In this case, the EU simply sets conditions to establish institutions that would be able to function in line with the EU consociational practices.

However, in EU membership aspiring countries with divided societies, simply conditioning the establishment or reforms of national institutions in a way that they are receptive to EU consociational practices would not suffice. One of the preconditions to the successful application of consociational practices is the existence of societal pillars, and a divided society lacks those pillars. Consociational practices would serve the mission of unification of such societies to a point that they would emerge as unified pillars and ready to contribute to the EU democratic stability. In this case, the EU conditions the establishment of institutions that would be receptive to consociational practices in two levels: the national level and the EU level. The EU conditions to its aspirants with divided societies some of the same practices that have brought democratic stability in some of its member countries with divided societies, as well as to the Union itself. Therefore, the divided society can emerge as a single pillar and its institutions are ready to function according to consociational practices at another level: the EU level.

The first part of my argument opens the way to its second part, that is, the theorization of the effects of EU membership conditionality on EU membership aspiring countries from Eastern Europe. Now that we have defined the nature of EU membership conditionality and the EU motivations behind it, and can also build expectations on EE leaders' policy preferences in each stage of sectorial reforms, we can build expectations on reform outcomes. Thus, the second part of my argument consists in building a set of hypotheses about the possible sectorial reform outcomes from a combination of different possible interests on that reform of both the EU and domestic leaders.

The EU-EECs negotiations are little more than a process of checking that the candidate countries have adopted EU law, chapter by chapter and page by page (Moravcsik and Vachudova 2005: 201). EU membership conditionality serves as a straightjacket that frames these negotiations. True, the EU has an embedded interest in eastward enlargement mainly nurtured by the general belief that it will bring peace and stability to the continent. On the other hand, arguably, there is no alternative for EECs except to join the EU (Dimitrova 2004: 2). This situation calls for theoretical explanations of institutional reforms in EECs that are centered on the dynamics of EU-EECs negotiations in the pre- and accession phase, with EU membership conditionality serving as a key explanatory variable. I argue that because the asymmetric interdependence in EU-EECs relations makes bargaining style negotiations between them difficult, these relations are characterized by either a tug-of-war between the EUs' and EECs' clashing priorities. The greater the incentive received by EECs for compliance to EU conditions, the easier and faster becomes their socialization with EU normative behavior.

EU membership conditionality does not apply uniformly over all policy sectors in all the countries. Both the EU and domestic leaders share different and varying political preferences over reforms in different policy sectors. In addition, it is easily conceivable that independent structural factors would influence differently across the institutional reforms. Thus, theoretically, the interplay of the causal factors in a certain reform would be different from the interplay of the causal factors in another reform. Therefore, I propose to analyze the impact of EU membership conditionality on EE institutional reform at a mid-theory level, that is, theorizing its effects on EE sectorial reforms. I call

this a *sectorial contextual* approach. It entails the analysis of the EU membership conditionality separately in each type of reform and compare the conclusions.

Rather than an overarching analysis of EE democratization, the sectorial contextual approach considers a series of cases of EE institutional reforms. For the sake of simplicity, I evaluate both EU's and EE leaders' interests in certain sectorial reform as positive (+), negative (-), and null (0), thus excluding a wide range of other policy potential preferences over the related reform. I am aware of the limitations that such a simplistic assumption will impose on the theoretical outlines I intend to suggest. Assigning values to EU policy preferences is easier since the latter states openly those preferences. However, assigning EE leaders' policy preferences is more difficult, and I have assigned these values only after a historical contextual interpretation of what rational leaders' interests in a certain reform would have been during a certain period. A detailed empirical elaboration of institutional reform progress in some EECs will provide a much better and deeper understanding of the dynamics of such reforms, and from here we can obtain a better explanation of policy outcomes during the process of institutional reforms in EECs.

Thus, EE governments undertake reforms mainly because of the domestic need for them (Elster, Offe, and Preuss 1998). Zürn and Checkel (2005) point out that before membership can be used as an incentive, a decisive change has already taken place in the country. National elites will have initiated reforms prior to EU conditionality and the sectorial priority of those reforms will have been determined by domestic needs rather than EU conditions. EE governments are more prone to undertake reforms regarding issues of major domestic concern despite the level of foreign assistance offered. Sometimes elites are proactive in implementing reforms that would bring their institutions in line with EU standards (Johnston 2001:488). Yet, presumably, the level of government commitment to reforms should allow leaders to maintain power, hence the claim that *EECs that aspire to EU membership advance reforms even if these reforms are not conditioned by international actors, but address major domestic issues* (Hypothesis 1).

In later stages of institutional reforms, especially in cases that represent sectorial reforms known in advance to conform to EU models or are conditioned according to those models, EU aspirant countries might ask for technical assistance. EE leaders are

often constrained by limited resources and knowledge, especially in dealing with specific sectorial reforms where technical experience might be needed; also EE governments cannot afford the luxury of the one-thing-at-a-time golden rule, but are forced to work simultaneously with several different tasks (Elster, Offe, and Preuss 1998: 19). If EU institutions have the same interests as EECs', EU assistance to these countries further lubricates and legitimizes reforms. Therefore, *the implementation of reforms that satisfy the interests of both EE and EU leaders provide the best chances for the most successful outcomes* (Hypothesis 2). This is the ideal case to observe the effects of communist legacies on EE reforms when leaders work to mitigate rather than exploit these legacies.

However, sometimes governments implement reforms that do not have any domestic impact but merely satisfy the interests and needs of international actors and donors, especially when these reforms are financially backed by the latter and do not threaten leaders' hold of power. In this case, insofar as domestic governments lack any interest in issues deemed to be addressed by these reforms, they remain *a la carte*, become inefficient, and the resulting institutions wind up feckless. The fact that the prospect of Balkan membership into the EU remains distant weakens the strategic effectiveness of EU conditionality as an instrument of influence for the region, especially when combined with the lack of tangible benefits. This line of reasoning suggests that *reforms undertaken only due to EU pressure, but that neither satisfy nor oppose EE leaders' interests are not viable and institutions built are weak and non-functional* (Hypothesis 3).

Some EU rules appear to be ill-conceived, ill-suited to transitional economies, inappropriate for particular countries, and excessively costly for economically and politically vulnerable countries. As applicant countries might need to divert funds from social programs in order to implement the EU *acquis* (Moravcsik and Vachudova 2005: 202), painful reforms may result in serious threats to country's stability. Economic restructuring affects the lives of millions of people who as a result may rise in demonstrations, strikes, and riots. Violent protests or regular elections could overthrow reformist governments and halt reforms. In such cases, in order to mitigate the pain of reforms and pacify contesters, governments might slow down the pace of reforms. Such a

deceleration may conflict with EU conditions and also with the geopolitical and security interests of some of the major EU actors (Skålner 2005).

In the final round of negotiations, the EU might also impose some more self-interested conditions. After having dedicated hard work to achieving the EU *acquis*, the EU forces candidates to accept unfavorable terms for their accession, that is, to sacrifice some portion of the benefits stemming from membership over the short and medium term (Moravcsik and Vachudová 2005: 202). As Sedelmeier (2005: 237) points out, previous enlargement episodes suggest that a lack of flexibility by the EU can cause severe problems for the candidate countries and lead to disgruntled new members. Political tensions might rise from these clashes, thus jeopardizing reforms. Therefore, we can expect *EE leaders' and EU's opposing interests on reforms to cause political tensions and slow the pace of reforms* (Hypothesis 4).

Yet, certain reforms remain outside of the immediate interests of both the EU and EE leaders. It is not that they either necessarily oppose these reforms; they are simply indifferent toward them. Of course, the 80,000 page communitarian *acquis* includes norms and procedures that cover almost every aspect of EU functioning. Aligning with them would require EECs to undertake reforms in all political, governmental, social, and economic fields. However, there are cases when implementation of certain reforms might not be an urgent priority and/or bring harm to both the EU and CEE leaders. In this case we can observe a greater of EE and Brussels bureaucracies, which, unburdened of leaders' interests, manage to successfully push forward these reforms (Grabbe (2003: 315). This is more a case with policy sectors where EU member countries may have adopted different models of that specific institutional design, and the EU might not have been able to embrace a single model of institutional arrangements related to that policy sector. In such cases, the EU may simply emphasize the need for institutional reforms in that sectorial policy area but not impose a specific condition that would be either prescriptive or have measurable results. In such cases, the EU refers to conditions and technical assistance coming from other regional IOs. Hence, *reforms that remain beyond of the EUs' immediate prescriptive conditions as well as domestic leaders' political preferences might be either successfully carried out by Brussels and domestic bureaucracies, or be conditioned and assisted by other regional IOs* (Hypothesis 5).



Some domestic reforms might fall outside of the EU interest and are opposed by domestic ruling elites. This scenario may involve policy areas that do not directly affect political and economic liberalization, human rights as we know them, and issues related to domestic and/or regional security and stability. The very technical nature of the issue might be the common cause of the lack of EU interest in that reform, while domestic leaders might prefer status quo in that sector. The opposition of domestic leaders toward such reforms might stem from both the need to hold onto administrative power in that particular sector or from the lack of unity among ruling elites for that reform. Sometimes, slow progress might occur, but often this may simply represent unsteady efforts to respond to the pressure of interest groups rather than to a political will to undertake the reform. *Reforms that are not within the interest range of the EU and are opposed by EE leaders will not proceed, or, if they have already begun, will be halted* (Hypothesis 6).

These hypotheses are compiled in Table 2. The positive interests and outcomes are marked with +; negative interests with -, and; the lack of any evident interests by foreign and/or domestic agents with 0.

TABLE 3.1 HYPOTHESES

HYPOTHESES	INTERESTS OF EU INSTITUTIONS	INTERESTS OF DOMESTIC LEADERS	OUTCOMES
HYPOTHESES 1	0	+	Good results
HYPOTHESES 2	+	+	Excellent results
HYPOTHESES 3	+	0	Good but uncertain results
HYPOTHESES 4	+	-	Tensions and uncertain results
HYPOTHESES 5	0	0	Uncertain results
HYPOTHESES 6	0	-	No reform

The policy dynamics represented in Table 2 are not the same across policy sectors. As we have seen thus far, during two decades, both EU and domestic leaders' sectorial preferences have changed and policy interests have shifted from hitherto highly prioritized sectors to sectors that have been previously neglected. Policy dynamics in each of the sectorial reforms can be explained with one or more of the outlined cases. Thus, Hypotheses 1 and 2 better explain early constitutional and economic reforms as well as their spillover to other sectorial reforms. Also, Hypotheses 2 and 3 might be helpful in explaining reforms in the asylum and immigration system, with its early dynamics better fitting within that explained by Hypothesis 3, and its later developments explained by Hypothesis 2. Hypothesis 4 helps to explain most of the stages of judiciary and local decentralization reforms as well as constitutional reforms that relate to them. Hypothesis 5 and 6 may help to explain different stages in social assistance, education, and health care reforms.

## **Research Design**

*Employing consociationalism to gauge EU interests in Eastern European institutional reforms: some conceptual clarifications*

I develop my elite-centered argument on the assumption that elites are divided and their competing political preferences lead them to different policy preferences regarding institutional reforms. This view is consistent with the foundations of transitology literature as established by Rustow (1970), and with some more recent literature on democratization that empirically test its hypotheses on EU enlargement and EE transition (Mansfield and Pevehouse 2006; Moravcsik 2000) as opposed to Prewitt and Stone's (1973) concept of unified elites (see also Finer ed. 1966). Under the conditions of divided elites, their preferences will determine the course of reforms. However, there are cases when there exists national consensus over the general need for reforms and/or distinct sectorial reforms. Usually, I use terms "elites" and "ruling elites" concomitantly.

I argued in the previous Chapter that consociational theory can serve as an overarching approach to explain both the practices that have made the EU a stable democracy and the practices that the EU employs in order to expand its model beyond its existing borders to the EU aspirants from Eastern Europe. Thus, EU membership

conditionality can be considered as a set of consociational practices that aim at influencing institutional reforms in the aspirant countries so the resulting institutions can be compatible with those of the EU. However, before implementing such a theoretical framework for explaining the effects of EU membership conditionality on EE institutional reforms, some conceptual clarifications are needed.

Specifically, we need a separation between what Barry (1975b) calls “consociational practices” and the definitional term “consociational democracy,” hence eliminating the tautological relationship between the definition of the phenomena and its cause.<sup>1</sup> This implies that we talk about consociational theory but not about consociational democracy. Lijphart himself (1969) has equated consociational democracy with stable democracy. Lijphart’s definition of democracy clearly states that it remains an ideal to be realized rather than something being experienced. It includes the democratic ideal and, implicitly, stability. Therefore, consociational democracy is simply a stable polity achieved through consociational practices. If stable democracies promote, as it has been professed, crosscutting cleavages that would “depillarize” segmented societies, and thus increase potentials for social cohesion even under majoritarian political institutions and practices, then we need not utilize the term consociational democracy. I think the cost of getting rid of the definitional features of consociationalism, namely “consociational democracy,” is practically null compared to the gain of clarity in causality.

Gabel’s (1998) argument in favor of the consociationalist character of EU democracy helps to reveal two facts: the EU can be persuasively interpreted as a deeply divided society; and the EU is a stable polyarchy. Moreover, its leaders have employed consociational methods to achieve that level of democratic stability. Yet, during the difficult postsocialist transition presents EECs’ the stability with enormous challenges. Some of the difficulties of the democratic transition are generated by the presence of strong leaders who compete fiercely for power, weak or absent institutions, deeply entrenched habits of mind, cultural legacies, and nation-building problems; this situation is very likely to produce instability, if it hasn’t already. Assuming that EU elites are rational actors, we should expect them to assure that such instability does not spill into EU member countries. Arguably, EU elites’ rationale calls for a solution to this problem by incorporating these potentially unstable countries into its political body.

Obviously, Eastern European societies are interested in democratic stability as well; pragmatically, it has been shown to work in the neighboring countries of the West, and they will hope that it will work for them as well. For this reason, they assign to their rationally-driven leaders the task of negotiating accession into the EU. In these negotiations, the EE leaders are in a disadvantaged position. It is very likely that they will be required to implement consociational practices in order to address the sources of their instability, but these may not be the only practices that the EU will suggest and/or condition to them; after all, democratic stability, not the oxymoronic “consociational democracy,” is the goal. Whether or not EE leaders implement recommendations coming from EU leaders as policy prescriptions during their process of institution building or reformation of institutions already in place requires a consideration of their rational preferences.

Consociational practices are, thus, those practices that help forging a stable democracy in a severely divided society by establishing governance by grand coalition, proportionality in representation, and mutual veto power. The purpose of EU conditions in both EECs with unified societies and those with divided societies is to establish institutions that would be receptive to the consociational practices that have brought about the Union as a stable democracy from a divided regional society. The difference rests with the intensity of these conditions: in the second case, EU conditions stretch over some areas where EECs with unified societies do not feel much the pressure of conditionality. And finally, there are other areas where conditionality is equally severe on both unified and divided societies. It should be expected that the EU conditions are more intensive in sectors where the application of consociational practices is particularly relevant in establishing and maintaining a stable democracy.

A consociational approach to the rationale of EU membership conditionality maintains that, pragmatically, the EU is expected to transfer its own practices to EECs; after all, what works for the EU should also work for its candidates. Arguments outlined above point to the consociational practices of EU, but no one has argued so far that all the EU practices are consociational and, obviously, not all of the EU institutions are built upon consociational practices. This claim sends us back to Costa and Magnette’s (2003: 6) argument that “the nature of the institutions set up to reach compromises depends on

the nature of the segment.” Building such institutions requires negotiations between pillars, which in our case means between the EU and EU membership aspiring countries. In an elite theory of democratization, “the nature of the segment” reflects in fact elites’ political preferences energized by that particular policy sector. Whether or not reforms in a particular institution will require consociational or majority rule practices, that depends on the political preferences of both EU and EE elites in that particular policy sector.

The EU conditions consociational practices to its membership aspirants in two levels. The first level is the EU level. That implies the establishing in EECs who aspire to EU membership institutions that will be receptive to the EU consociational practices. This is a case with countries with mainly unified societies, which are able to provide their elites with clear and legitimate mandates to negotiate with the EU during the process of EU accession and integration. In other words, building domestic institutions receptive to EU consociational practices prepares the EU membership aspiring countries for the political life within the EU. The second case implies the EU conditioning consociational practices in both domestic and EU level. This is the case of EU membership aspiring countries with deeply divided societies. In this case, EU conditions consociational practices that would simultaneously establish democratic stability in these countries and establish institutions receptive to EU consociational practices. The first step aims at molding those countries as “pillars” and unifying them around their elites by providing them with a clear and legitimate mandate to negotiate with the EU. The second step is the same with other EU membership aspiring countries with unified societies: it implies the establishing institutions that will be receptive to the EU consociational practices during negotiations of accession and integration.

#### *The empirical test and data*

To test my cases, I develop a process tracing analysis of four institutional reforms in Albania and Macedonia. I also analytically consider the case of institutional reforms in Bulgaria, and Romania during their process of transition from state socialism to market oriented democracies. In the case of Albania and Macedonia, I trace every step of those countries’ institutional reforms, while in the case of Bulgaria and Romania, I only present a general assessment of the institutional transformations in these countries by focusing on

a comparative view between the pre-Accession and post-Accession development. The process tracing analysis will focus on highlighting moments of policy shift and inquire about the causal factors of such a change. In the case of analyzing Bulgarian and Romanian institutional reforms, much of my conclusion will derive from the analytical work of other authors; however, those conclusions will be critically scrutinized in order to assure their compatibility with the findings of my process tracing method

*The selection of cases: reforms and countries*

Listing institutional reforms necessary for resolving the main issues of political conflict, Welsh (1994) come up with the following areas: reform of electoral system; reform of the government structure (including issues of decentralization); selection of new political elite; development of institutions of interest articulation and interest aggregation (e.g., political parties, interest groups); constitution writing; prosecution and purge of communist party officials and members of security apparatus; restitution of past injustices; and reform of the media sector. However, in order to test my cases, I need to consider some institutional reforms that go beyond those mentioned by Welsh. Usually, policy sectors with fiercer political competition generate either positive or negative preferences by leaders. However, I also analyze cases when domestic leaders might not have a specific preference for a particular reform. Only sectors that usually do not produce conflict would be outside of the political preferences range of domestic leaders. Hence, sectorial reforms that fall outside of those mentioned by Welsh are necessary to test as many of the outlined cases as possible.

My empirical test will cover only constitutional, local government, judicial, and asylum and immigration reforms. These reforms might not be sufficient to test all the cases—to test Hypotheses 5 and 6, for instance, an inquiry into health care and/or education systems is needed. However, as long as that particular case holds logical consistency, there is no need to discard it, and future research could empirically explore their validity.

As for the countries themselves, starting with similarities that stem from their ideological affiliation with the Soviet Bloc and/or the Soviet style society, both these countries converge to the nationalistic socialist system that Tito in Yugoslavia and Hoxha

in Albania developed as a tool of legitimacy as a compensation for their breakaway with the Soviet Union. Albania came out of severe and isolated communist dictatorships and began introducing economic and political reforms by the beginning of 1991. Although out of the Soviet orbit since the early 1960s, Albania never abandoned the Soviet-style state system. Macedonia is a newly independent state which emerged from the Yugoslav breakdown. As such, like Albania, Macedonia comes from a maverick, nationalist communism, yet with a more liberal and western-oriented tradition.<sup>2</sup>

These similarities might serve as a good explanation of these countries' state organization during communism and the reforms that they needed in order to adapt and build institutions to assist them during the transition to democracy and its consolidation. For Albania, there is no walk of life that did not need reforms, while Macedonia had to start its institutional building as an independent state from scratch. From the economic model perspective, socialism, with disputable success, has tried to transform these countries from agrarian economies of the pre-WWII era to Soviet-style mega-industrialization, while the agriculture sector varied from totally nationalized as was the case of Albania to totally private as in Macedonia. However, different ideological nuances and geopolitical orientations have not inhibited these countries from implementing Soviet style governments and, from this perspective they share more institutional similarities than differences.

From the institutional perspective, both these countries come from the Ottoman tradition as opposed to the Habsburg tradition of the rest of Eastern Europe (Rupnik 2000).<sup>3</sup> Thus, even though the Habsburg Empire was not a liberal democracy comparable to the British model, neither was it a royal autocracy like the tsarist Russia; rather, it was a *Rechtsstaat*, a state run by the rule of law. Accordingly, that tradition of the rule of law has been inherited by some Eastern and Central European countries that succeeded the Habsburg Empire (Rupnik 2000: 19). Although Rupnik does not discuss the consequences of the Ottoman tradition for institutional building and the establishment of the rule of law, his observation suggests that countries that inherit this tradition do not share the same view of institutions. Categorizing countries according to this criterion might not necessarily be accurate. Albania gained independence in 1912 and has had enough time to build its state structure; Macedonia has existed in Yugoslavia first as a

Serbian region (1919-1945) and then as a republic (1946-1991), but Yugoslavia itself inherited both the Habsburg tradition (Croatia, Slovenia), an Ottoman tradition (Bosnia and Herzegovina, Macedonia itself, and Kosovo) as well as a longer tradition of independence (Serbia formally since 1868, and Montenegro formally since 1878). However, the uniform 45 years long Soviet institutional might be considered enough to erase much of the previous institutional traditions in both countries.

From the perspective of pre-WWII development and post-communist economic reforms,<sup>4</sup> both countries also share similarities and differences, with the latter prevailing. Albania became an Italian colony, while Macedonia was simply the most underdeveloped part of Serbia and Yugoslavia itself.<sup>5</sup> After the collapse of communism, Albania embraced a shock-therapy economic reform program, while Macedonia has been reluctant to undertake radical reforms and remained laggards, at least until 2001, when it began pursuing aggressive economic reforms.

Another factor that, according to Rupnik (2000: 20), has defined the success of transition in Central and Eastern Europe compared with Southeastern Europe is the ethnic homogeneity/heterogeneity of society. Here both countries differ significantly. A highly ethnically homogenous society, Albania is composed of 95 percent ethnic Albanians, 3 percent ethnic Greeks, and 2 percent Vlachs, Roma, Serbs, Macedonians and Bulgarians. In the highly heterogeneous Macedonia, the 2002 census showed that ethnic Macedonians represented 64.2 percent of the population, ethnic Albanians 25.2 percent, Turkish 3.9 percent, Roma 2.7 percent, Serbs 1.8 percent and other ethnic minorities 2.2 percent.<sup>6</sup>

And, finally, there is the international environment factor. Indeed, for this research, it represents a key independent variable. There are four international organizations which directly affect the region: the EU, NATO, the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE), but only two of them, the EU and NATO, are able to offer sufficient economic and security incentives as to substantially affect reforms in Eastern Europe. This research focuses mainly on the EU's influence on institutional reforms in EECs. As Grabbe (2001: 1013) points out, such an influence goes well beyond its official competencies in current member-states; it affects the reform speed, domestic elite adaptation with EU norms and the inescapability of EU membership conditionality for countries that aspire to EU



membership. The process of EU enlargement toward these countries has developed through two different programs: European Agreements for Bulgaria and Romania and the Stabilization and Association Process for Albania and Macedonia. However, although these countries might receive conditions of different intensity for different sectors, as a package, normatively, EU membership conditionality is supposed to indiscriminately affect their reforms.

Table 3-2 compares the selected countries.

### *Variables*

I consider domestic leaders' interests in a reform to be positive when the development of a specific reform helps them gain attain and/or maintain power and negative when the reforming process might harm their power positions. As my argument states, often leaders either undertake reforms or stop them based on power calculations. Some existing blueprints can serve as guidelines, though. Generally, we should expect leaders to be more oriented during reforms during the revolutionary periods of "extraordinary politics," that is, the initial period of regime change when a broad consensus exists among both the political elite and the public on the need for reform. However, the rhythm of reforms slows down during period when politics become routinized and which becomes 'ordinary politics' Balcerowicz (2002). In the former period, swift and sweeping reforms can be undertaken without much delay as the large involvement of the public in politics overshadows power politics. This is usually a short period, four years in Poland, 16 months in Albania and less than three years in Macedonia.<sup>7</sup> Moreover, we should expect smooth reforms during the first year or two years after the return to power of a formerly deposed party, e.g., a party that has lost power in previous elections, as usually those parties scrambles to show a new image to domestic public and international partners. One should expect their return to power politics during the second part of their terms. However, EU might manage to change leaders incentives to certain sectorial reforms by specific "sticks and carrots." This is the case of the EU visa liberalization agreements when the EU managed to change overnight the interests of Albania's and Macedonia's leaders in asylum reforms from neutral to positive.

TABLE 3.2 ALBANIAN AND MACEDONIAN HISTORICAL CONTEXTS

COUNTRY	IDEOLOGIC. LEGACIES	INSTITUT. LEGACIES	HABSBURG VERSUS OTTOMAN LEGACIES	ECONOMIC LEGACIES	ETHNIC HOMOGENIT.	INTERNAT. ENVIRONM.
ALBANIA	A Stalinist, isolated from the rest of the world, nationalistic communist regime	Has inherited institutions totally incompatible with transition requirements	Gained independence from the Ottoman Empire only in 1912: long lasting Ottoman legacy	A totally nationalized, centralized, isolated, and backward economy	Highly homogeneous Albanians: 95% Greek: 5% Vlachs, Roma, Serbs, Macedonians and Bulgarians: 2%	1) June 19, 1991: Joined OSCE; 2) 1992: Agreement on Trade and Commercial and Economic Cooperation with the EU; 3) July 3, 1995: Joined the CoE 4) June 12, 2006: Signed the SAA 5) Spring 2009: Applied for EU membership
MACEDONIA	A constitutive republic of the second Yugoslavia; has inherited a more open attitude toward the West	As a newly independent country, needed to build institutions from scratch	Went out of the Ottoman Empire only in 1912: long lasting Ottoman legacy	The most underdeveloped economy among the Yugoslav Republics, yet with some freely developed economic sectors	Heterogeneous Macedonians: 64,2% Albanians: 25,2% Turkish: 3,9% Roma: 2,7% Serbs: 1,8% Others: 2,2%	1) October 12, 1995: Joined OSCE 2) November 9, 1995: Joined the CoE 3) September 2001: signed the SAA 4) December 2005: official EU candidate

Measuring EU interests in Eastern European institutional reforms is easier since the EU states its interests in official documents. Indeed, the very release of such documents for specific countries shows a positive EU interest in reforms in those countries. Therefore, before the release of the *Stabilization and Association Programme* (SAP) we can generally assign as neutral the EU interests in the Albanian and Macedonian institutional reforms. However, the launching of the SAP did not mean that the EU became equally interested in all the institutional reforms of both countries. In that case, I use documents and historical contextual analysis to map out EU interests in specific Albanian and Macedonian institutional reforms. I consider EU interests in a certain reform to be positive when EU institutions openly and forcefully condition that reform. By the same token, I consider EU interests in a certain reform to be neutral when the EU remains ambiguous about the level, shape, and financial support for that reform. The EU is expected to oppose a policy/reform if it goes against the prescribed policies designed by the EU; although such cases might be extremely rare, instances or elements of different reforms might face EU opposition. EU interests are easily traceable through the way it employs EU conditionality and allocates funds that support the EU accession. From a rational point of view, it is conceivable that the EU would enforce policies that allow EECs to achieve its *acquis* (interests) and would only recommend, but would not condition, policies in areas where it has weak or neutral interests. But, of course, the best way to measure EU preference for a specific reform is to heed its annual Progress Reports where the European Commission assesses reform progress in the candidate or membership aspirants, and outlines “homework” for the coming year.

I am aware that measuring the EU and EE interests only as positive (+), negative (-), and neutral (0) represents an oversimplification of the range that these interests might cover. A consociational approach suggests that EU interests in a certain sectorial reforms in a EU membership aspiring country is negatively correlated with the existing institutional capabilities of that country to absorb consociational practices of EU internal integration when it joins the EU ranks; namely, the less these institutions are able to absorb such consociational practices, the stronger the conditions are. We should expect the conditions to be even stronger in the case when domestic institutions need to be receptive to consociational practices both for establishing a stable democracy at home and for enabling the EU integration of the country. However, for the moment, we lack any scale measure that would help in assessing intermediate interests. I detect these intermediate preferences qualitatively, and employ the same methodology to trace

preferences in the intermediate range. I admit that, due to the lack of indexes that accurately measure actors' political preferences in reforms, my categorization of interests might bear a certain level of subjectivity that is unavoidable in qualitative research.

I will measure institutional reform outcomes—the dependent variables—using both quantitative and qualitative evaluation method. I will use qualitative measurement wherever possible; this includes constitutional and judicial reforms where reform progress has been indexed by the American Bar Association. For decentralization reform, Freedom House has introduced an index since 2005. However, the only way to measure these reforms before the introduction of these indexes is qualitative. In order to fulfill this task, I use reports from the Council of Europe and the European Union. Reports of the Congress of Local and Regional Authorities (CLRA) of the Council of Europe are also good source to evaluate the reform progress in local decentralization.

Until now, we lack a quantitative indexation of asylum and immigration reforms in Eastern Europe; hence I will assess reform progress in this sector only quantitatively, mainly by relying on EU's Annual Progress Report. Before the introduction of the Progress Reports, UNHCR and IOM have commented about the quality of asylum and immigration protection systems in these countries.

### *Data*

I rely on a large variety of both qualitative and quantitative data. One of the sources is interviews, consultations, and opinion exchanges that I have developed with politicians and state administrators in countries in the region. My long time experience within Albanian politics and my friendship with some Albanian, Kosovar, and Macedonian politicians has facilitated the collection of such data. Usually, data collected through such interviews help to assess both leaders' political preferences and their perceptions about EU preferences. Other data come from research developed by domestic and foreign institutions and scholars. A major source of data are reports written by EU and other international organizations about the reform process in analyzed countries as well as governments' statements on related topics.

## Conclusions

In this chapter I argued that viewing the EU as a stable democracy brought about by consociational practices helps explain not only the internal integration of the Union but also its eastward expansion. Arguably, the EU has employed consociational practices to establish a stable democracy out of the severely divided continental/regional society of states. Henceforth, the EU also expands through conditioning its aspirants to build institutions that would be receptive to these practices. In the case of countries with unified societies, institutions' receptiveness to consociational practices should rest only at the national level, that is, between the aspirant countries and the EU. In the cases of severely divided societies, these institutions should be receptive to consociational practices both at the domestic and international levels; at the domestic level, they would help establish a stable democracy; at the international level, they would consociationally help the process of integration of the country with the EU order. Moreover, in EU membership aspiring countries with divided societies, consociational practices themselves are necessary in order to build such institutions since their existence implies the existence of a stable democracy. I call this a consociationalist approach to studying EU membership conditionality.

EU policies meet varying reactions from domestic leaders, and the combination of preferences for a certain institutional reform of the EU and domestic leaders are the key variables that explain the reform results. Sometime, some structural independent variables might interfere, but there are mainly actors' policy preferences that determine the outcomes. EU preferences are represented as its membership conditionality. The question is not whether or not membership conditionality works, but under which circumstances it affects policy changes. EU membership conditionality is more intensive and consistent in cases when they tend to build institutions receptive to consociational practices in institutions affecting both domestic policies and sectors that are relevant in the EU integration. The latter affect every country that aspires to join the Union; the former affect only those EU aspirants with deeply divided societies. This explains why EU does not condition similarly every sectorial reform and every country, hence my sectorial contextual approach. Afterward, the political dynamics between the EU and domestic leaders' political preferences in specific reforms helps to explain their outcome reforms.

The sectorial contextual approach and the consociationalist approach to the EU eastward expansion are intrinsically linked. While the latter explains why the EU condition institutional

reforms in the EU, the former explains why institutional reforms develop the way they develop. Implicitly, the consociationalist approach to EE eastward enlargement explains the source of EU interest in EE institutional reforms as well as the intensity of EU conditions in different sectorial reforms, while the sectorial contextual approach helps to explain the outcome of the reforms when both domestic and foreign variables are taken into account. The consociationalist approach helps us to understand the source of EU conditions and, by understanding the rationale behind these conditions, also to evaluate their intensity; the sectorial contextual approach expands our understanding and explanation of specific EE institutional reforms by adding to the consociational approach domestic leaders' political preferences about these reforms and other independent structural variables that reflect the social context where a specific reform occurs.

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<sup>1</sup> In practice, that will not be so easy since even Brian Barry (1975b), the most severe critic of that tautology, refers to consociationalism both as “consociational practices” and “consociational model” in the definitional sense.

<sup>2</sup> The similarities and differences among the selected countries and institutional reforms will become even more evident in the course of institutional reform process tracing. However, there are several distinct differences even among former Yugoslav constitutional units (six republics and two autonomous regions). One of the major differences among them is the nature of Macedonian nationalism as a Titoist creation. As the Albanian-Macedonian intellectual and politician told me in an interview with him in the summer of 2009, during the Titoist Yugoslavia, all the nationalisms were suppressed, with the exception of the Macedonian nationalism. The latter was rather encouraged within the same Yugoslav nationalist logic invented by Tito: it would serve as a bulwark against Albanian, Bulgarian, and Greek claims over Macedonia.

<sup>3</sup> Indeed, when Rupnik (2000) develops his discussion of the Habsburg versus the Ottoman factor, he mainly focuses on the former while the reader is invited to assume the opposite for the latter.

<sup>4</sup> For the relevance of such a feature in selecting the countries, see Rupnik (2000).

<sup>5</sup> The region belonged to the Ottoman Empire and was captured by Serbia during the First Balkan War, 1912, and became internationally recognized as its territory with the post-war peace treaties. In the interwar period, it was known as *Južna Srbija* (Southern Serbia) or *Stara Srbija* (Old Serbia). During World War II (1941-1944), Albanian-populated western territories of the Vardar Banovina were occupied by the Italian-ruled Albania, while the pro-German Bulgaria occupied the remainder.

After World War II, with the reconstitution of the Titoist Yugoslavia as a federal state, the Vardar province already established in 1944, became with the 1946 Yugoslav Constitution a republic known as People's Republic of Macedonia within the new Socialist Federal Republic of Yugoslavia. The name was changed to Socialist Republic of Macedonia in the 1963 Constitution of Yugoslavia.

<sup>6</sup> CIA World Factbook 2007. At <https://www.cia.gov/library/publications/the-world-factbook/index.html> [Accessed September 2010].

<sup>7</sup> However, in the case of Macedonia, the “extraordinary politics” period served nation building more than democratization, and public involvement in countries' politics did not represent a large consensus since Albanians of Macedonia were left outside of the process.

CHAPTER IV  
CONSTITUTIONAL REFORMS IN ALBANIA AND MACEDONIA:  
CONDITIONING CONSOCIATIONAL PRACTICES FOR EU AND DOMESTIC  
DEMOCRATIC STABILITY

The case of constitutional reforms in Albania and Macedonia is instructive in demonstrating how EU-EEC negotiations can be analyzed as a process of imposing consociational practices on two levels. The case of Albania is much simpler than that of Macedonia. Although Albanian elites were bitterly divided, the same could not be claimed about the Albanian public. Communist rule actually played a major role in unifying Albanian society. A unified political thought shaped during a Stalinist-type repression, combining Marxism with Albanian folklores, proletarian internationalism with local mythology, and dreams of industrialization/ technological progress created a surrealist environment where time stalled and everyone found himself equally poor. Systematic purges within the Party of Labor, the Albanian communist party, stirred by a dictator that was growing fretfully paranoid with age, oppressed communists and dissenters alike. The strict system of *pashaportizim* [residence permit] thwarted any demographic movement outside the party's control, and, as the pace of industrialization slowed after a rupture with China in 1978, population movement practically stalled. Two to three generations of Albanians were born and died in the same residential site, and perhaps even in the same apartment. Regions were isolated by high mountains and a poor international highway system, and the state-run internal transportation system was deplorable; the movement of people even within the country was very limited. In 1969, the communist regime managed to close all religious institutions without any resistance from a population that has never displayed any dedication to religion even in better days. Religious practices and institutions were declared illegal in the Constitution of 1976. Class division was declared overcome. While minority rights mostly benefiting a tiny Greek minority in the south were constitutionally promulgated, its members were equally oppressed. The regime of Ramiz Alia, the new authoritarian leader who took power after the death of Enver Hoxha in April 1985 continued faithfully on the same course. In sum,

on the wake of the last decade of the twentieth century, Albanians found themselves equally impoverished and oppressed, equally incapable to revolt, and equally confused about what should be done.

Different political dynamics were occurring in Macedonia. As by the end of the 1980s and the beginning of the 1990s Yugoslavia began to fragment, Macedonian national conscience was not fully ripened, even though, arguably, the Macedonian ethnic identity was the only one encouraged in communist Yugoslavia (Brunnbauer 2002: 10; Palmer and King 1971: 153-74).<sup>1</sup> The need to finally consolidate an uncertain ethnic identity led Macedonian elites to project a potentially independent Macedonia with an almost congruent identification of the Macedonian nation with the state (Brunnbauer: 2002: 10). On the other hand, more than one quarter of the country's population, ethnic Albanians, were experiencing a difficult and slow, but steady awakening, albeit many Albanian elites had moved to Kosovo where the ethnic group has been enjoying political and cultural autonomy since 1968 (Lebamoff and Ilievski 2008: 10). Both ethnies, Macedonians and Albanians, lived side by side yet totally separated.<sup>2</sup> Most Macedonians worked in state jobs<sup>3</sup> while ethnic discrimination kept Albanians out of such employment and pushed them to private business.<sup>4</sup> Albanians were discriminated against in education, political participation, administrative employment, and cultural life (Lebamoff and Ilievski 2008).

The deep political mistrust among the elites in both Albanian and Macedonia led to a perception of constitutional reforms as efforts to establish institutional settings that would allow the dominant group to wield maximum power and benefits. However, while in Albania the power struggle was between opposing political groups of the same ethnicity, in Macedonia there were the ethnic majority and minority who struggled, the former for "the eternal rights of the Macedonians,"<sup>5</sup> and the latter for the state-constitutive rights of the Albanians in Macedonia. This may explain why, although Albanian political debates over constitutional reform were often heated, they did not lead to armed struggle as was the case of Macedonia. However, while Albanian constitutional reform was not the source of distrust and violent protests among contending parties, as a political topic it contributed to the simmering political climate of the country. Constitutional arrangements were perceived to assist in establishing a system of check-



and-balances between the parties. Thus, the EU role in stabilizing Albania after the 1997 crisis focused intensely on the approval of a new constitution. The approval of the 1998 Constitution shows how the political will of dominating elites, combined with EU support for the process led to successful reforms even under strong domestic opposition.

In Macedonia, constitutional reform implies concepts such as nationality/ethnicity, stateness, majority/minority, citizenship, state symbols, and even literary metaphors. Issues such as to whom belongs the country, whom should be considered majority and minority and under what circumstances, the official language of the country, what state/national/ethnic symbols should be used needed to be addressed in constitutional arrangements. Since these issues often had to do or were perceived to be related to the very existence of an ethnic group, and since fear of extinction has been a major element in formulating political responses to social processes in some ethnically divided societies (Kaufman 2001), constitutional reform in Macedonia was “won” through armed struggle and the enormous diplomatic efforts of the EU, US, and OSCE.

This chapter revisits constitutional reforms in Albania and Macedonia. The purpose is to highlight the coincidence of both domestic and international factors, and whether policy outcome, that is, the sectorial reform produced by their interplay, corroborates my argument. In Albania, a unified society, the EU has had only a peripheral involvement and, in that case, we can barely speak of real conditionality. Since Albanian society is a unified society, there was no need to condition a constitution that would transform Albanian society as a unified “segment” for its further negotiation with the Union. All what was needed was a constitution that would facilitate the receptiveness of the consociational practices during the accession process and the further integration in the case of an eventual membership in the Union. On the other hand, the omnipresence of the EU in the entire Macedonian constitutional reform and its firm condition to reach an agreement between the Macedonians and Albanians, as well as during the process of implementation of the Ohrid Agreement, shows that the EU need to impact the establishment of institutions that would be receptive to consociational practices in two levels: in the domestic level, such institutions would produce a stable democracy; in the regional level, their receptiveness to EU consociational practices would facilitate the negotiations of Macedonia with the EU and also the further integration of the country

with EU institutions. The analysis of this process is especially important since, as we will see during the empirical discussion, constitutional reforms in both countries, particularly Macedonia, were keys to the establishment of other institutional reforms. After the successful completion of constitutional restructuring in Albania and Macedonia, these reforms became causal factors in sectorial reform.

### **The EU and Albanian Constitutional Reform<sup>6</sup>**

The wave of democracy sweeping the Eastern Europe during the late 1980's did not extend to Albania which still had a communist constitution that propagated the unchallenged rule of the *Partia e Punës* (PP) [the Labor Party]. The communist rule did not recognize any separation of powers nor checks-and-balances. Hence, the Albanian constitution was intended to bolster and legitimize the communist rule rather than establish a constitutional republican political system.

By the early 1990's however, the democratic wave finally arrived in Albania as evidenced by the Democratic Revolution of December 1990 and the ensuing first pluralist elections at the beginning of 1991. The major issue that the first pluralist *Kuvend* (Albanian legislative body) had to tackle was constitutional reform. In an attempt to reflect the changing Eastern European political context, the former communist PP who emerged as the major victor of the March 1991 elections, had its own project for a new constitution. PP's interest lay in the approval of a constitution that would allow it to control the democratization and liberalization process. The opposing *Partia Demokratike* (PD) [Democratic Party] viewed this agenda not only as a Communist effort to manipulate, and ultimately benefit from democratization, but as a way to block serious and deep reform. A political battle ensued in the *Kuvend* during the period of April-June 1991 and resulted in a political victory for the PD. That success can be attributed to a free fall of PP, general strikes that paralyzed the life of the country in May-June, and violent clashes between angry anti-government demonstrators and security forces. However, with the resignation of Fatos Nano's PP government on June 7, the reluctance of the party to reform itself, the lack of the necessary parliamentary votes for PD to form its own government, and the lack of preparation by both parties to enter into new elections, both

parties decided to enter into a governing coalition called *Qeveria e Stabilitetit* [Government of Stability].

Besides establishing a coalition government, the two parties agreed to constitutional reform. Immediately after the inauguration of the new government, PP entered into a period of internal restructuring that began with its transformation into *Partia Socialiste* (PS) [the Socialist Party] during the First Congress in June, 1991. The PD, in political offensive, offered the option of a mini-constitution, a temporary constitutional package titled Major Constitutional Provisions. PS had no choice but to accepting co-leadership in the country's constitutional reform. There were two reasons for the PS' consent. First, its political power at the time was rapidly eroding; and second, a new generation of socialist reformers became increasingly aware of the need for a new constitution. Conclusively, the reform was successful, and the Major Constitutional Provisions seemed to balance immediate and expected needs. The document provided the foundation for the Albanian transition toward democratic reforms in other sectors. This process occurred completely without attention by or pressure from any international actor. It simply represented the power struggle between domestic actors. PD's proposal was aimed at taking the political initiative from the PS as well as consolidating some of its recent major political achievements such as political pluralism, multiparty elections, citizens' right for private property, restitution of religious institutions, and guaranties of fundamental human freedoms. This case supports my claim that when domestic actors support a reform but the international actors are indifferent toward it, the domestic power game may still lead to successful reforms.

The 1991 consensus over the Major Constitutional provisions resulted in an overwhelming victory for the PD in the March 1992 elections. During the remainder of the year, PD used its two-thirds majority in the *Kuvend* to make some constitutional amendments aimed at consolidating its increasingly authoritarian rule. Sali Berisha, the former Chairman of the PD, was elected President of Albania in April 1992 and supported constitutional changes that would enable him to maintain control of the party, the judiciary, and the powerful *Shërbim Informativ Kombëtar* (ShIK) [National Intelligence Service].<sup>7</sup> The PD's attempt in 1994 to gain popular support in a referendum for a new constitution, thus circumventing the *Kuvend*—where it had already lost its two-

third majority due to two splits—met aggressive resistance from the opposition. Indeed, the referendum became a means for both the ruling coalition and the opposition to settle scores. Thus, rather than debating the proposed constitutional draft, political discussion was littered with the PD government's accusations that the ex-communist PS members had criminal pasts and the opposition's accusations that the ruling government had cooperated with the Yugoslav president Slobodan Milosevic by allowing the violation of the UN embargo against Yugoslavia along the Albanian-Yugoslav border.

The opposition had asserted more than once that it wanted to compromise in the *Kuvend* for a new constitution, and that the PD needed revisions in order to guarantee the democratic future of the country. Moreover, the opposition also voiced the need to consult the draft with Albania's international partners. Instead, Berisha made the success of the referendum its personal political battle. Albanian ruling elite was not interested in passing a wide accepted constitution, but only one that fit its power calculations. In contrast, the opposition, driven by the same rationale, was interested in preventing Berisha from having a constitution that would significantly increase president's prerogatives. In the end, both sides saw the referendum more as a mid-term test for Berisha's rule than as a national effort to pass a constitution. The opposition managed to prevail with a narrow "No" vote in the referendum. Therefore, we can conclude that the ruling elite was not really interested in passing a constitution (compromise as a viable vehicle toward the reform was rejected) but in having a mid-term test of the electoral weight of both sides. This negative interest led to the failure of the constitutional reform.

The referenda outcome was a message to the Albanian ruling elites that any efforts to pass a new constitution could not succeed without a compromise with its political adversaries, a political enterprise that he was not ready to undertake.<sup>8</sup> Moreover, the referenda failure turned the PD focus in the preparation for the national elections of May 1996. During the period 1995-1996, a lack of interest in reforms and, especially, the constitutional reform removed the issue from the Albanian political discourse, and no efforts to constitutional reforms were recorded during that period.

The Albanian institutional weakness led to an utter failure of democracy during its first postcommunist transitory period, 1992-1997, and a collapse of the state in February 1997. Angry protesters who have lost their savings in Ponzi schemes investments looted

military barracks and burned state institutions when the government froze the activity of these companies. The political crisis ended with an intra-party agreement in March 9, and the establishment of the Government of National Reconciliation with the specific task of restoring order and preparing the country for the new elections. The afterward efforts to restore order and public institutions included the establishment of a constitution. The foreign actors who were interested in the stability of the country believed that the newly invigorated constitutional reform process could serve as a means to create cooperation between parties that were involved in violent struggles that had contributed to the demise of the nation. Since the EU was in the forefront of international assistance to reorganize the Albanian state, it embraced the issue of a new constitution as one of the pillars on which the new state ought to be found. At that point, the Albanian constitutional reform became not just a matter of domestic politics, but also an international one.

The June 1997 election brought to power a center-left coalition led by the PS and Fatos Nano, who was released from prison in early March only to return as Prime Minister. One of the first tasks of the new government was the promulgation of a Constitution. Its drafting began with a special decision of the *Kuvend* in September 1997, but the work of the Commission for Drafting the Project-Constitution only began in early 1998 and concluded in October of the same year. The Commission was in fact an inter-party and inter-institutional committee co-chaired by a majority representative, Minister for Legislative Reform, Arben Imami, and Sabri Godo, Chairman of the *Partia Republikane* (PR) [the Republican Party], a minor partner of the opposition coalition. On November 28, 1998, Albanian's Independence Day anniversary, a referendum was called to approve the Constitution. The PS-led governing coalition had a clear political interest in approving the new constitution; it wanted to succeed where the PD had failed. Moreover, the PS clearly viewed the process of modern constitution building as a way to gain political legitimacy from international actors who distrusted their ex-communist legacy.<sup>9</sup> The PS, however, needed the support of the international community in order to institute such a process. The US and EU supported constitutional reform, with the full participation of the domestic political spectrum seen as necessary for re-establishing political stability in the region. In January 1997, on the eve of the Albanian state collapse, the Parliamentary Assembly of the Council of Europe had called “upon the government

and the opposition parties [in Albania] to end the political crisis in the country” and stated that “a new constitution should be prepared and adopted. All parties represented in parliament should be properly involved.”

The Albanian constitutional reform of 1997-1998 occurred as a result of a tight cooperation at a political and technical level between the European troika—the EU, the Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe<sup>10</sup>—with the EU holding the political leverage to condition constitutional reform while the two other organizations assisted with technical expertise. Domestic actors were interested in a constitution that would fit the idiosyncratic domestic context. The bitter experience with a powerful president compelled the Albanian elites to envisage a constitution with more power concentrated into the hands of a more controllable prime minister. In addition, the principle of qualified majority underpinned several articles in order to enforce compromise among political actors for important decisions that affect political aspects that go beyond everyday governance. For example, the constitutional provision ensured the election of the president with three-fifth of the *Kuvend*’s votes. International actors were able and eager to offer assistance as long as framed within already well developed Western constitutionalism. In January and July 1998, a Three Parliamentary Delegation (the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament) visited the Albanian capital, Tirana. In both occasions, the delegation stressed the need of drafting and approving the Constitution as an additional means of achieving political stability.

Western European financial and technical assistance to the Albanian process of Constitution drafting was funneled through two channels: first, the Commission for Democracy Through Law (the Venice Commission) assisted with legal technicalities during the drafting process;<sup>11</sup> second, OSCE established the infrastructure for communicating with the public and other domestic and foreign associations interested in the process. Such assistance was given by the OSCE-established Administrative Center for Assistance Coordination and Public Participation (ACACPP) in Tirana, which was financially supported by a US Government fund granted to the OSCE for that purpose. Furthermore, direct financial and technical support was given by the EU and the German, Japanese, and Norwegian governments.<sup>12</sup> From the institutional EU-Albania relations

viewpoint, the EU influence on the Albanian constitution drafting and approval cannot be considered as a typical exercise of EU membership conditionality policy since formal conditions to Albania emerged only after the EU-Western Balkans Summit of Zagreb, November 2000 when the Stabilization and Association Program for the Western Balkans was launched and Albania accepted the invitation to join. However, knowing the persistent desire of the Albanian public and elites to join the EU, as well as the strong pro-American feelings among Albanians, it is easily perceivable that both the EU and US could have wielded major influence on political developments in the country even without formal EU membership conditionality.

Mr. Arben Imami, the former Co-Chair of the Commission for Drafting the Project-Constitution and Minister for Legislative Reform and Relationship with *Kuvend*—with whom I have co-authored and published several articles on this topic (see for instance Peshkopia and Imami 2008; Peshkopia and Imami 2007), has told me that the EU never applied any pressure on the Albanian government to approve the Constitution. EU concerns rested on whether the Constitution would meet the widely accepted democratic, EU-style criteria. Interpreted according to my model, the EU was interested in having a partner “segment” or “pillar” which would be receptive to consociational intervention. In case the EU and Albania ever decided to negotiate unification into a common “society,” the EU needed to make sure that the negotiating “pillar” was “playing” by the same rules as the EU, and that the Union was not importing problems from the newly partnered segments, but was exporting stability through their membership. The Albanian willingness to abide by the rules of the game explains why the need for the EU to politically interfere in the process never emerged and EU assistance consisted only of the tacit commissioning of the issue to the Council of Europe.

However, this is not to say that the domestic elites forgot their power-oriented interests. The political will leading to approval of the 1998 Constitution occurred because the 1997 crisis produced an overwhelming anti-PD majority. After eight years of faltering center-left coalition rule characterized by continuous crisis within the leading PS, the center-left coalition suffered an electoral defeat in the general elections of 2005 to the PD led by Sali Berisha. The latter became Prime Minister of the new ruling center-right coalition. The egocentric personality of Mr. Berisha led him into conflicts with the

country's President Alfred Moisiu. With Mr. Alfred Moisiu's mandate coming to an end in spring 2008, and having failed to gather the constitutionally stipulated three-fifth majority for electing a new President, PD had two options: find a compromise with PS on a candidate that would be acceptable to both sides, or dissolve Kuvend and enter into new elections.

Berisha's long lasting enmity with Fatos Nano came to an end as Mr. Nano resigned from the leadership of PS after the electoral defeat of 2005. With the mayor of the capital city Tirana, Edi Rama, in the helm, the PS began a restructuration process to appeal to younger voters. Although Rama's charisma, he had poor connections with the PS structures, and his election as the Chairman of the Party thrust him in a power struggle with the party's establishment. In order to establish himself as the undisputed leader, he needed new elections. A parliamentary crisis over the election of the new president would have been a golden opportunity. However, several PS representatives who were known as supporters of Mr. Nano broke ranks and voted for the PD's candidate Bamir Topi. As the election of Topi killed the chances for new elections, Rama became preparations for the regular elections of 2009. He needed institutional prerogatives that would consolidate his power within both the party and the leftist electorate. That meant the marginalization of Ilir Meta, a former PS prime minister who split from the party in 2000 to form *Lëvizja Socialiste për Integrim* (LSI) [Socialist Movement for Integration].

The combination of Rama's and Berisha's interests led to the last development in Albania's third constitutional reform. In a Spring 2008 session, the *Kuvend* approved with the united votes of parliamentarians from both the PD and PS (115 votes out of 140 representatives) some constitutional amendments which changed the method for electing the legislature and president, the procedures for a confidence vote for the prime minister, shortened the mandate for the general prosecutor from seven to five years, and changed the electoral system from a corrected majoritarian system to a regional proportional one. These were obviously important changes since, especially the first, affected the two most powerful institutions of the country. These changes drew much criticism from some political parties as well as from a loose movement of concerned citizens, intellectuals, and semi-independent media. They were proposed only few weeks earlier by a junior representative of the ruling PD who had no public credentials for such a political action.



The draft was immediately discussed in the Parliamentary Commission of Law, and presented for approval to the plenary session by both the Democratic Party in power and the main opposition party, the Socialist Party. The mysterious draft which was discussed neither in the Commission of Law and Parliament nor with relevant international actors was easily approved, in spite of fierce opposition from the *Levizja Socialiste për Integrim* (LSI) [Socialist Movement for Integration] and some isolated representatives from the majority.

The constitutional change of the electoral system concerned an old problem of Albanian politics; the Constitution of 1998 laid out the principle of a mixed electoral system, a two-ballot contest, with one vote for the candidate, and the other for the party. That system was systematically abused by the competing political parties, leading to distortions of the voter's will and rendering their votes unequal. As noted by the OCSE's Office for Democratic Institutions and Human Rights (OSCE/ODHIR) in its Final Report on Albania's national elections of 2005, the strategies conducted by some parties "undermined the constitutional objective of proportionality 'to the closest possible extent' of the electoral system, which remains open to abuse and should be reformed in an inclusive manner."<sup>13</sup> As the Report went on, "the legal framework does not ensure that the Constitution's stated objective can be realized, i.e. to achieve a parliament composed on the principle of proportional representation."<sup>14</sup> The Report also specifically recommended that "[t]he Electoral Code should be amended to ensure that the objective of proportionality to the closest possible extent in Article 64.2 of the Constitution can be realised more effectively."<sup>15</sup> The constitutional amendment that introduced the regional proportional electoral system, Law Nr. 9904, April 21, 2008, was also perceived as helpful in indirectly reducing informal electoral donations and aggressive electoral campaigns.<sup>16</sup> A major negative ramification of the amendments was the practical expansion of the electoral barrage from 3% to 25%.

Reform of the Electoral Code became a constitutional issue and not simply a technical issue for two primary reasons. First, the PD, as the governing majority party, bore the brunt of the responsibility of working with the EU. They were therefore interested in reaching a consensus with the PS and other opposition parties on the approval of a new Electoral Code to show their fundamental commitment to improving

election standards, thus likely ensuring country's progress towards EU membership. Second, the PS sought to eliminate or perhaps marginalize through legal means, its disobedient ally, LSI. While Sali Berisha, Prime Minister and Chairman of the PD, remained neutral about the clashes between PS and LSI, his eagerness to institute the reform is evidenced by his public declaration that the majority party would agree with any proposals submitted by the opposition parties, especially those coming from the PS, the largest opposition party. Even if the quarrels within the opposition camp did not concern the PD, supporting any agreement among them could do no harm. Moreover, Premier Berisha was feeling threatened by the growth of the *Partia Demokristiane* (PDK) [Christian Democratic Party], a small electoral force, but a growing parliamentary faction as it served as a refuge for renegade representatives from both sides. The same electoral system that would have benefited Rama would have benefited Berisha as well.

The reduction of the number of parliamentarian votes needed to elect the President of the Republic from three fifth to a simple majority was not the result of any EU pressure. Rather, Albanian elites were interested in the constitutional changes. The PS Chairman Edi Rama, pressed for the reform in order to achieve two objectives: first, he needed to address the political circumstances that made him irrelevant in the 2008 presidential election when renegade PS parliamentarians helped the Chief of the PD parliamentary faction, Bamir Topi, to be elected president; and second, he cleared the way to presidency for the former PS Chairman Fatos Nano who was trying to emerge as a rival within the Party while also nurturing Presidential dreams. Nano's potential emergence as a contestant in the next presidential election of 2014 could create problems for the PS both if it were by then a majority or minority force. The PS leader's best interest was to avoid the difficult process of the election of the President. Both Berisha and Rama preferred a winner-takes-it-all political game, with the majority having all the needed powers to rule during their terms, and the opposition free from any responsibility.

Moreover, for the majority, more important than specific provisions was the fact of an agreement *per se*.<sup>17</sup> Agreement with the opposition on such fundamental issues as constitutional reform created a consensual political climate which served each domestic and international political entity. It fulfilled the continuous EU demands for normalization of government-opposition relations, and undermined harmful reaction by the opposition.

That was particularly needed after the fatal explosion in munitions demolition factory in Gërdec, near the country's capital of Tirana.<sup>18</sup> The massive blast claimed the lives of 26 persons and caused enormous material damage in the surrounding villages. The attack was launched as a reaction against corruption by the Prime Minister Berisha and members of his family.

One of the amendments defines the conditions under which a confidence vote can be undertaken. It stipulated that a confidence motion against the prime minister could be held only if those who proposed the motion offered in advance the name of a new candidate Prime Minister. That would have been difficult even during the 2005-2009 political terms since the ideological diversity of the political adversaries of Mr. Berisha could be easily united *against* him, yet not support another leader. Apparently, this was the PS's payback to the concessions of the PD, which in turn would serve the PS proper in the case that it won the election.

The most important feature of this constitutional reform was the overcoming of an alleged old enmity between Chairmen Berisha and Rama—indeed, Rama had always positioned himself with the radical anti-Berisha wing as opposed to the former PS leader Fatos Nano, especially in the case of the PS-PD agreement of 2002 nick-named “Nano-Berisha.” The 2008 agreement on the constitutional amendments interested the EU who—despite its officials being caught-off-guard officials—was pleased at the level of cooperation between the Albanian political parties. The changes were reached based solely on the rational interests of domestic leaders. The next day, the OSCE Representative in Tirana, Ambassador Robert Bosch considered the reform as a visible step toward the OSCE/ODHIR recommendations of 2005.<sup>19</sup> Helmut Lohan, the EU Representative of the EC in Tirana, declared that the EC would analyze the constitutional changes, but most important was the fact that the majority of the Albanian lawmakers were united behind these changes.<sup>20</sup>

#### *A consociationalist interpretation of Albanian constitutional reform*

The Albanian Constitutional reform represents a one-level conditioning of consociational practices from the EU, that is, the establishment of institutions receptive to consociational practices. While these institutions would help maintain domestic social cohesion, their

main goal is to facilitate country's accession negotiation as well as its integration with EU institutions after the accession. Conditioning a constitution that would be and create domestic institutions receptive to the EU consociational practices would assure that the domestic power struggle will happen within these institutions, thus preventing elite divisions from spilling over the rest of society. However, our empirical analysis showed that in the last round of the constitutional reform in 2008, the Albanian elites have been willing to compromise on constitutional reforms. Moreover, the current state of the Albanian society shows that deep political divisions at the elite level do not reflect the state of the Albanian society which is, indeed, unified around the idea of the nation-state. Contemporary authors point to the religious harmony in Albania, but sometimes overemphasize the North-South divisions. Such views reflect their familiarity with Albanian society through old textbooks and travelers' memoirs from periods before WWII, more so than knowledge of the contemporary state of Albania. Expressions such as "Ghegs" for Northern Albanians and "Tosks" for Southern Albanians are almost unknown for generations born during the communist era.<sup>21</sup>

The unified Albanian society already resembles a pillar within the European society of states; hence, EU conditions are directed toward addressing certain elites' political behavior in a manner whereby they institute reforms that conform to current EU consociational practices. This explanation is validated by the Copenhagen European Council, December 2002, the Thessaloniki Agenda for the Western Balkans, June 16, 2003, and the Declaration of the EU-Western Balkan Summit, Thessaloniki, June 21, 2003 which recognized Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro "as potential candidates."<sup>22</sup> As Albanian elites have the willingness to compromise among them, there has been no need for the EU to condition consociational practices, but only watch and endorse the process which has been technically assisted by the CoE's Venice Commission.

Although the EU officials did not seem excited with the political style of the April 2008 constitutional reform,<sup>23</sup> the EU had to accept it since it did not threaten the receptiveness of Albanian institutions to the EU consociational practices. While the constitutional amendments reflected and served the power struggle, they contributed to neither good governance and better functioning of the institutions, nor their undermining.

They only created a set of rules to conduct the power struggle, governance and opposition. Under such conditions, the EU interest on that reform was neutral, and the EU officials supported it by an evasive, yet meaningful, rhetoric.

*A sectorial context interpretation of the Albanian constitutional reform*

The case of the constitutional reform process in Albania leads to the conclusion that its positive results during 1991-1992 and 1992-1994 stem from the joint positive interests of domestic actors albeit the absence of any condition imposed from foreign actors. From 1991 to 1998, all of the Albanian governments had been interested in crafting a new constitution, although many reforms had been stalled because of the lack of an overarching constitutional framework. PD's failure to pass a constitution through a referendum does not reflect the rejection by the opposition parties and the majority of voters of the idea of a constitution, but rather the rejection of the PD's rule. Hence, because of deep divisions among the two main political parties, the interests of the main opposing actors regarding approving a new constitution did not converge. In 1997, for the Socialist- Centrist coalition, drafting and passing approved a constitution turned out to be a political issue: what Democrats failed to do during their 5 year rule, they could now do. Additionally, the EU, having introduced in June 1997 the principle of membership conditionality for the CEECs, heavily supported the process of constitution approval. In this case, both EU and the Albanian ruling elites had positive interests. A revival of the interests of the new majority that emerged from the June 1997 elections combined with the increasing role of some international actors facilitated the process of constitutional reform, in spite of deep divisions between opposition groups in government. And finally, from April 2008 on, constitutional changes were undertaken by unified domestic elites based solely on power oriented considerations without any regard for EU opinions, and perhaps with sufficient information that EU representatives would not object to such changes.<sup>24</sup>

The empirical case of the Albanian constitutional reform helps to confirm the hypothesis that the best scenario for instituting such reforms are those where either the interests of both domestic elites and the EU concord or where the interests of domestic elites meet indifference from the EU. While it might look as a self-evident hypothesis, the

TABLE 4.1 DEVELOPMENTS IN ALBANIAN CONSTITUTIONAL REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1991	Period of “extraordinary politics.”	0	+	<b>Good results</b> and positive spillovers on other reforms. The approval of the Major Constitutional Provisions happened through a pact of domestic elites who were interested in some transitory constitutional arrangement, yet without any input from any international actor.
1992	The beginning of “ordinary politics”	0	+	<b>Good results.</b> The elites were divided since the opposition did not want only amendments of the Major Constitutional Provisions but a new constitution. However, the PD controlled the sufficient two-third of votes in <i>Kuvend</i> for the amendments. No international presence and/or assistance in the process.
1994	The constitution referendum	0	--	<b>No reform.</b> The elites were divided. On the one hand, the ruling elites was interested in passing the constitution in a referendum, and the opposition asking for its passing in <i>Kuvend</i> as stipulated by the Major Constitutional Provisions. No international presence and/or assistance in the process.
1995-1997	Period of political instability	0	0	<b>No reform.</b> As both the government and opposition realized the impossibility of passing a new constitution, they lost interest in a constitutional reform and focused in other political priorities. No international presence and/or assistance in the process.
1998	Restoration of state and order	+	+	<b>Excellent results</b> and positive spillovers on other reforms. The new Constitution was passed since the majority of the elites, namely the ruling elites, managed to gain popular support in the process. Strong international/EU support for the reform.
2008	Constitution amendments	0	+	<b>Swift reform,</b> but fierce critiques from some elites. However, since an overwhelming majority of the elites supported the reform, it garnered legitimacy, and was rhetorically accepted by the EU officials. While it undermined some consociational practices (qualified majority as a form of mutual veto) it strengthened some others (established a proportional electoral system).

Careful analysis of this case has two major implications for the future of this research: first, it might help to at least diminish and, at most, partially devalue claims that EECs do not possess enough expertise and human capital to conduct reforms. As a wry anonymous observer noted, the April 2008 constitutional changes were agreed and passed during only two days of cellphone text exchanges between majority leaders and the opposition. However, the constitutional amendments were enough to radically transform some of the major principles of the 1998 Constitution such as the electoral system and the presidential election system, the first one aimed at correcting representation issues while still allowing constituencies the chance to address their respective representative; the second aimed at forcing agreement among parties electing an encompassing President.

Table 4.1 charts the Albanian constitutional reform as affected by both the EU's and domestic leaders' political preferences toward the reform.

### **Imposing Two-Level Consociational Practices: The EU and Macedonian Constitutional Reform**

While Albanian constitutional reform focused on the transition from Stalinism to pluralism, the constitutional reform in Macedonia had the massive undertaking of building a nation-state centered on Macedonian ethnicity. We can understand better that phase of the Macedonian constitutional reform as propelled by *constitutional nationalism*. This concept refers to “a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state,” which envisions a state where sovereignty resides with a particular ethnic group, and where only the members of that privileged ethnic group “can decide fundamental questions of state form and identity.”<sup>25</sup> Moreover, the struggle for constitutional arrangements in Macedonia was plagued not simply by hostility between the two contending ethnic groups, the Macedonians and the Albanians, but also with mutual racist feelings aimed at questioning the very legitimacy of their opponent as a real ethnic group or autochthonous population on that land. Interethnic discussions in Macedonia center around political, demographic, historic and mythological topics. Thus, the view of the Albanians was (and continues to be) that the very concept of Macedonia as a political entity is a Titoist invention of the

Second Yugoslavia emerging after WWII which was intended to weaken Serbia within Yugoslavia, yet not allow the society of the newly established Yugoslav Socialist Republic of Macedonia develop any Bulgarian, Greek or, to a lesser extent, Albanian identity. According to the ideologists of Albanian nationalism in Macedonia, the Macedonian ethnicity was created to justify the existence of the Republic of Macedonia within Yugoslavia. As a consequence, while all the other nationalisms were oppressed in the Titoist Yugoslavia, Macedonian nationalism was tolerated and even encouraged.<sup>26</sup> Macedonians, in turn, argue against a solid historical presence of the Albanians in that territory, thus attributing the current presence either to waves of migration from Kosovo during the Yugoslav era or to Albanian high birth rates (Daskalovski 2006).

The entire constitutional discourse in Macedonia develops around ethnicity, and the constitutional developments in Macedonia mainly concern interethnic relations. Thus, studying Macedonia's constitutional reform is tantamount to studying the Albano-Macedonian ethnic conflict that has been haunting the country even since its conception. Debates over the national anthem, national flag, official language, local decentralization and to whom the country belongs that have been either non-existent or very low profile in most of the rest of Eastern Europe are components of the daily lexicon in Macedonian politics. Some of them were resolved only through armed conflict and multifold international diplomacy.<sup>27</sup> Therefore, the constitutional reform process in Macedonia is probably the best case study of the effects of EU membership conditionality. First, the interests of both domestic and international leaders are clearly observed and assessed; Albanians could expand their political influence through constitutional change; Macedonians preferred the status quo; and EU leaders sought to prevent war, learning a lesson from Bosnia and Kosovo (Ragaru 2007: 5). Second, both the EU's sticks and carrots were transparent and easily distinguished.

Studying the Macedonian crisis is tantamount to studying the dynamics of the affairs of political elites within each of the major ethnic groups. The cohesion of Macedonian elites ranged from being united around the Communist League of Macedonia which was perceived as caring and affirming of Macedonian national interests in the wake of independence, to deep disagreements regarding the country's ethnic identity in the late 2000s, to the confusion on how to tackle the domestic Albanian-centered crisis as



well as the international crisis with Greece. The Albanian elites moved from a peripheral role granted to by the Macedonian majority during the process of independence,<sup>28</sup> to a mostly unified elite during the heydays of the *Partia Demokratike e Shqiptarëve* (PDSH) [Democratic Party of the Albanians], 1998-2001, to an increasingly fragmented elite ever since (Lili 2009; Sejdiaj 1998).

*Macedonian Constitutional Reform in Paper and Practice: Dodging the Bullet or Baiting it?*

The Macedonian crisis reemerged as the Yugoslav crisis unfolded. Parallel to their efforts to keep the Yugoslav Federation together, the Macedonian elites were preparing for any potential independent Macedonia, and making sure that the new state would belong to Macedonians.<sup>29</sup> Titoist Yugoslavia was continuously negotiated among and shaped by the unified communist elites with arrangements and structures that, arguably, offered symbolic satisfaction to the various ethnic groups in the newly constituted state (Schöpflin 1993: 188). However, in 1989, the Macedonian communist elite changed the Titoist constitution of the Yugoslav Socialist Republic of Macedonia, claiming the new state for the “Macedonian people” instead of “a state of the Macedonian people and Albanian and Turkish Minorities” as referred to in the 1974 constitution.<sup>30</sup> However, rather than contributing to the foundation of a Macedonian dominated ethnic nation, the act served as a red flag to Macedonia’s main minority group, the Albanians, who saw the declaration as an ominous sign that their very existence might be at stake. Simultaneously, the 1989 constitution pushed Albanians to a position of rejecting everything that was considered by Macedonians as a cornerstone of their new nation-state: the country’s history, language, flag, and autochthony. The only element of the emerging Macedonian identity that was not openly challenged by the Albanians was its name. While they had not any high regard for the name or recognized its legitimacy, the Albanians did not want to share a common cause with Greece, a longtime political rival of their motherland Albania in the Balkans.

During the period 1989-1991, both the Macedonian public and its leaders were too busy to heed the Albanian grievances. While the Macedonian public was swept by the collective nationalist hysteria, the Macedonian elites were simultaneously preparing the

institutional framework of the new country and scrambling to keep together Yugoslavia (Daskalovski 2006; Zimmermann 1999). The effect of this nationalistic tide can be easily detected in the radicalization of the rhetoric. Thus, in October 1990, while a statement on state and legal relations within Yugoslavia issued by the Executive Council of the Republican Assembly considered Macedonia as “the national state of the Macedonian nation founded on the sovereignty of the nation,” it still defined Macedonia as a democratic state of its citizens.<sup>31</sup>

Macedonian elites’ turn to constitutional nationalism began in the summer of 1989. On July 19, *Sobranie* (the legislative body), passed several constitutional amendments. Amendment LVI (16) clearly states that “The Socialist Republic of Macedonia is the state of the Macedonian people, based on the sovereignty of people as well as the working class, of workingmen and the self-administering democratic community of workers and citizens, of the Macedonian people as well as other members of nations and nationalities who live in it.” This amendment did remove the words “as well as its Albanian and Turkish nationalities” which appeared in the version approved in 1974. This change, aimed at defining to whom the state belongs, downgraded the status of Albanians from a constitutive nationality to an unnamed minority. The new course was clarified by the Communist League of Macedonia ideologist Svetomir Shkakik’: “Macedonia is to be defined as a state, and the only bearer of this statehood should be the Macedonian nation. That is why the new definition excludes the sovereignty of the nationalities in Macedonia” (cf. Daskalovski 2006: 37). As Daskalovski (Ibid) notes, by changing the constitutional amendments, and thus preserving Macedonian interests against any potential manipulations by minorities, Macedonian communist elites showed that they cared about the interests of the Macedonian people.

The new constitution of Macedonia promulgated by the *Sobranie* November 1, 1991, took one step further in consolidating the Macedonian constitutional nationalism. The Preamble of the new constitution stated that “Macedonia is established as a national state of the Macedonian people providing full citizens’ equality and permanent cohabitation of the Macedonian people with ... [the] nationalities living in the republic of Macedonia.”<sup>32</sup> Aside from dropping citizens’ sovereignty, the implementation of the Yugoslav notions of “nation” for Macedonians and “nationality” for the others clearly

asserted to whom the new country belonged. Moreover, Article 7 of the new Constitution declared the Macedonian language in the Cyrillic script as the official language of the Republic of Macedonia. Article 19 mentioned specifically the Macedonian Orthodox Church while no other religious community was referred to. Other provisions such as Article 8 (the use of languages by nationalities), Article 48 (the right of nationalities to establish cultural associations and public education in their mother language at certain levels of education), and Article 45 (the right for private education at all levels except the primary one) ensured that the Constitution would apply the concept of nation-state for Macedonians and state-nation for other ethnic groups.

Arguably, this hybrid application of such concepts delivered to Albanians that they could not see themselves as constituent elements in the state formation process. Their rights were substantially reduced in comparison to the 1974 Constitution. The new Constitution introduced the concept of “majority requirement” in the official use of the languages of nationalities, thus limiting application of the Albanian language only to municipalities where Albanians were majority, and practically abolishing its usage at a national level. The group rights to political representation for nations nationalities enshrined in the 1974 Yugoslav constitution were abolished only for nationalities (Marko 2004: 698), and strengthened for the Macedonia nation/ethnic group.

The Albanians of Macedonia complained that the legislative process for the new Constitution both in Commissions and on the floor of the *Sobranie* was characterized by unproductive debates.<sup>33</sup> Finally, the Constitution passed on November 17, 1991. Yet, rather than clearing the way for a stable functioning society and resolving accumulated problems, the Constitution itself was problematic. None of the proposals offered by the Albanian parliamentarians were approved, an obliteration of the Albanian factor. In turn, the Albanian parliamentarians did not vote for the Constitution.

Daskalovski (2006) has given a very detailed picture of Macedonian elites’ behavior throughout that process. By the late 1980s, those who held a political and intellectual monopoly over the local communist organization, the Communist League of Macedonia, pressured by various groups, movements, and associations that emphasized elements of Macedonian ethnos and culture. The groups were pointing to the alleged violation of minority rights of Macedonians in Albania, Greece, and Bulgaria. The role of

the Orthodox Church in political affairs surfaced for the first time, and the building of a colossal Orthodox cathedral in the center of the country's capital, Skopje, became the symbol of national renaissance and ethnic pride for population at large and the communist elite endorsing the project. Aegean Macedonians and their descendents who had lived as a minority in Greece, but fled their villages during the Greek civil war in 1949, began to become vocal in demanding that the Greek government allow them to return to their properties. The International Reunion of Child Refugees of Aegean Macedonians staged massive demonstrations in and outside the country. The Macedonian communist elite who also managed to persuade the Yugoslav government to pressure Greece into recognizing its Macedonian minority (Danforth 1995: 134-137).

As the political and social life of the country liberalized, the newly founded political parties and citizen associations were becoming increasingly radical. First, the Movement for Pan-Macedonian Action that emerged from the Macedonian Writers Union, and then *Vnatrešna Makedonska Revolucionerna Organizacija–Demokratska Partija za Makedonsko Nacionalno Edinstvo* (VMRO-DPMNE) Internal Macedonian Revolutionary Organization-Democratic Macedonian Party for Macedonian Unity sought to capitalize on both the rights of Macedonians in Bulgaria and Greece and the status of Macedonia within Yugoslavia. The communist elites responded sympathetically, trying to insure their political survival on the republican political stage and secure the position of Macedonia in the uncertain federal future. Thus, while on the one hand the Macedonian elites molded the citizen movement unleashed by political liberalization to their political needs, “tolerating critique as long as it did not directly threatened party interests,” on the other hand, they “made use of the growing Macedonian pluralistic society to legitimize and magnify the Macedonian public support for their position in the federal level debates” (Daskalovski 2006: 28). As Maleska (1998: 159) notes, “the Macedonian party elite estimated that it would inevitably carry victory in [*sic*] multiparty elections” (cf. Daskalovski 2006: 28).

The entire process of Macedonian transition from the Socialist Republic of Macedonia within the Socialist Federal Republic of Yugoslavia to the independent Republic of Macedonia was conducted without any input from the large Albanian minority in the country.<sup>34</sup> During the Yugoslav period, Albanians of Macedonia felt

severely oppressed and isolated. While during the 1970s and 1980s the Albanians of Kosova were enjoying the large autonomy guaranteed by the 1974 Yugoslav Constitution, the Albanians of Macedonia enjoyed only minimal national rights. Any political dissent was oppressed ruthlessly, and during the 1980s, many Albanian activists in Macedonia suffered long periods of imprisonment under charges of “irredentism and separatism.” Many members of the young elite moved to Kosovo where they could better develop their intellectual and professional interests; intellectual life amidst Albanians in Macedonia died. Practicing Islam became the only intellectual outlet for a large Albanian youth.

Thus, the underdevelopment of political structures among the Albanians in Macedonia found their elites unprepared, unorganized, inexperienced, and slow to respond to the Constitutional transformation of Macedonia. The Albanian resistance to the Macedonian nation-state at the expense of their national rights consisted of boycotts of the referendum for independence on September 8, 1991, the parliamentary vote for the new Constitution on November 17, 1991, the promulgation of the new Constitution in *Sobranie*, January 6, 1992, to the more radical act of unilaterally declaring the “Albanian Autonomous Republic of Illirida” in the western part of Macedonia where Albanians dominate. However, except for the “formal” act, the latter did not influence any further political action and diminished as Albanian political efforts focused on domestic reforms in education and public administration. However, when in spring 1991 then Macedonian President Kiro Gligorov succeeded in his efforts to build a “government of experts” representing all parliamentary parties, the Albanians participated. As it has been noted, the exit options in the early 1990s looked dreadful for the Albanians of Macedonia: Kosovo was under Milosevic and Albania was preoccupied with recovery from its severe communist experience;<sup>35</sup> “with the costs of repression too high for Macedonians, and the price of exit too great for Albanians, peace was maintained by Macedonian and Albanian elites mutually adjusting the terms of their partnerships” (Hislope 2005).

Hence, the early years of the new Macedonia witnessed the paradoxical experience where elites became somewhat unified by fears of a foreign power, even though they disagreed on almost all domestic issues. During that period, all the major international actors had been reluctant to recognize the rancor of the Albanians in Macedonia. In 1991, the US foreign policy was being reconstructed along with the

dwindling preoccupation with its previous archrival, USSR, only to end up to the isolationism of the early Clinton administration caused by the events of October 1992 in Mogadishu. As for the EU, its member countries were divided: German interests favored independent Croatia and Slovenia as well as the need to show consistency with the already recognized newly independent former Soviet republics; the French and British caution reflected their historic alliance with Yugoslavia and Serbia. However, in an attempt to unify its policies toward the failing Yugoslavia, the EU created in August 1991 the Arbitration Commission on the Peace Conference on Yugoslavia, or, the Badinter Commission headed by the French lawyer Robert Badinter. While a respected constitutionalist, he had little knowledge of international law, ethnic conflict, and the Balkans. In Opinion No. 6 (on Macedonia), the Commission recommended that “the European Community accept the request of the Republic of Macedonia for recognition, holding that the Republic had given the necessary guarantees to respect human rights and international peace and security.” However, “the EC was initially reluctant to accept the recommendations in this opinion, due to the Macedonia naming dispute.”<sup>36</sup>

“Working within the system” remained the most viable option for Albanian elites,<sup>37</sup> and the entire focus of the Albanian political struggle was to carve an Albanian presence in institutions where it was weak, and strengthen its role in institutions where their influence has been traditionally denied, i.e., police, army, public administration and local government. As a result, Albanians increased participation in the judiciary system, education, police, and army,<sup>38</sup> increased visibility in the parliamentary struggle, and increased assertiveness of their political representatives. Indeed, the latter became the real focus of the political battle where the 1991 Constitution was seriously challenged.

That challenge began in December 1994 when the Albanian dominated municipal councils of Tetovo, Gostivar and Debar established the Albanian language *Universiteti i Tetovës* (UT) [University of Tetovo]. The university became a political issue that outstripped its educational relevance and brought Macedonian police and protesting Albanians face to face. As police destroyed one of the UT facilities in the village of Reçica outside Tetovo, crowds of angry demonstrators confronted the police. The resulting fire left one demonstrator dead and dozens of others wounded; the Rector of the UT Fadil Sulejmani was arrested and later sentenced to jail time. The year 1995 saw

struggle between Albanian politicians who claimed that Albanians have the constitutional right for a private university in their own language (Article 45), and Macedonian officials who considered the University to be illegal. Moreover, following the “parallel system” model of their brethren in the occupied Kosovo, the Albanians decided to conduct lectures at UT although all acknowledged that, as it was, the university was not achieving academic standards (Sejdiaj 1998). The UT reopened in November 1995 tolerated by weary Macedonian authorities (Daskalovski 2006; Marko 2004).

The other major showdown was in Gostivar and Tetovo. Candidates from the newly formed Democratic Party of the Albanians won votes from some of the most important regions in Macedonia dominated by Albanians. PDSH was formed by the unification of a former radical faction of the mainstream *Partia për Prosperitet Demokratik* (PPD) [Party for Democratic Prosperity] who splintered in 1994 with *Partia Demokratike Popullore* (PDP) [Democratic People Party], an already existing small Albanian party. Soon, the more radical stances and rhetoric of PDSH attracted Albanian voters and, with electoral success in local elections, its newly elected officials challenged government authority. The Albanian dominated city councils of Gostivar and Tetovo decided to put the Albanian and Turkish flags on their city halls’ facades. After two months, the Constitutional Court declared the action as unconstitutional and demanded their immediate removal. A law adopted by *Sobranie* on July 7, 1997, on the use of national symbols followed suit with a May 1997 ruling of the Constitutional Court allowing for the use of such symbols only in private. Parliamentary debates in *Sobranie* which lasted into the late hours of the day revealed the divisions between Albanians and Macedonians were on the issue. On July 9, around 3.00 am, only a few hours after the new law was passed, police forces entered the city of Gostivar and removed the Albanian and Turkish flags from the city hall. In the morning, an angry Albanian crowd protested the removal of their flag and, responding to Mr. Osmani’s appeal “to protect their flag with their blood,”<sup>39</sup> confronted the Macedonian dominated police forces. The ensuing riot resulted in two fatalities, 30 people injured (among them nine police personnel) and 320 people detained (Sejdiaj 1998: 271). Police also took control of entries to the city and reinforced their presence on the city streets and squares. The Mayor of Gostivar, Rifi Osmani and the President of the City Council were detained and, later, arrested. Charges

were also brought against the Mayor of Tetovo, Alajdin Demiri and the President of the City Council, Bedri Rexhepi.

In sum, the strategy of the Albanian elites in Macedonia worked. During the period 1990-2000, their participation in public administration increased fivefold (Lebamoff and Ilievski 2008: 15). Embroidered, Albanians continued to contest all the pillars on which the Macedonian nation-state was built: the Constitution, education laws, local self-government, public displays of national minority symbols, and ethnic make-up of the police, army and administration (Daskalovski 2006: 58). On the political stage, they continued to boycott parliamentary activities, national referendums and population censuses.<sup>40</sup> A number of Albanian-Macedonian professionals who were developing their career in Kosovo during the 1970s and 1980s returned to the country only to have “found themselves locked up in an uneasy face-to-face with the Macedonians (Ragaru 2007: 6). They brought with them a stronger national conscience, political will, and intellectual credibility. Their increasing influence among the Albanian masses helped them to keep the Albanians mobilized through major popular demonstrations, projects of political autonomy, and sheer threats to resort to violence if necessary in order to achieve Albanian aspirations.<sup>41</sup>

The confused and indecisive Macedonian response to Albanian demands, as well as radicalization of the Albanian political elite, increased confidence among Albanians that strong response would force Macedonian elites to compromise. Indeed, as the events of the UT and Gostivar demonstrated, the Macedonian elites were indeed reluctantly willing to negotiate, but only after the situation was already radicalized (Marko 2004). The disjointed and belated Macedonian elites’ responses to the emerging crises, the reshaping of Albanian elites’ rational calculations, and changes in the regional political environment led to the violent conflict of the early 2000s. As a United Nations Development Program (UNDP) survey held at the eve of the Macedonia’s interethnic violence in 2001 indicated, 60% of Albanian male respondents (age 18-24) and 16.4% of Macedonian males of the same age group found violence an acceptable political approach (cf. Lebamoff and Ilievski 2008: 13).

While “working within the system” was the practiced policy, Albanian politicians always retained the option of working-outside-the-system. Following the violent the



reaction of the Macedonian government against the unilateral decision of Albanians to open the UT, many Albanian parliamentarians in the *Sobranie* walked out of the plenary. However, while PDP members returned later, others refused to return. Their leader, Arbën Xhaferi, threatened: “if Skopje does not heed our demands, we will build our institutions” (Sejdiaj 1998: 62). There were already signs that many Albanians of Macedonia were no longer willing to accept the status quo, and Albanian elites warned both Macedonian leaders and officials of European international organizations of the simmering situation.<sup>42</sup> One of the most worrisome events was, of course, the so called “weapons affair,” but violent clashes between Albanians and Macedonian security forces in Debar, Ladorishta, Ljuboteni, Radolishta, and Bit-Pazar, as well as bombs in Priljep, Kumanovo, and Skopje could also have served as alarm bells.<sup>43</sup> Yet, both Macedonian elites and officials of European organizations ignored the warnings and continued to see Macedonia as the “oasis of peace” in the troublesome Balkans.

The results of the October-November 1998 elections brought to the fore the most radical fractions among both Macedonians and Albanians. The nationalistic Macedonian VMRO-DPMNE of Lupče Georgievski and the radical Albanian PDSH of Arbën Xhaferi forged a governing coalition that began to show surprising courage in tackling issues related to the improving the plight of Albanians. The coalition tacitly functioned as in a federal state, with the highest official in each of the Ministries (Ministers or Vice Ministers) practically serving as the Minister for the specific policy area in the respective territories (see also Brunnbauer 2002: note 16). The VMRO-DPA coalition tried to resolve many of country’s lingering problems, while supporting economic reforms that affect all citizens. However the coalition frequently ruptured as both sides slipped into nationalistic rhetoric to maintain political legitimacy with their respective voters. Perhaps the gravest crisis between VMRO-DPMNE and PDSH occurred when Kosovar refugees entered Macedonia in spring 1999 in order to escape the ethnic terror that Milošević unleashed on the eve of the NATO bombardment of Yugoslav military units and facilities. While the coalition survived the crisis due to the short duration of the Kosovo War and the return of Kosovar refugees, the real threats to the coalition were emerging in the mountains that separate Macedonia and Kosovo during the second half of 1999 through the end of 2000.

In fall 2000, presumably small groups of ethnic Albanian guerrillas began to engage Macedonian special police troops in the outskirts of Tetovo, the capital of Albanian habited territories in Macedonia. As Rusi (2004) who more than anyone else has probed into the history of *Ushtria Çlirimtare Kombëtare* (UÇK) [National Liberation Army] notes, its early origins remain something of an enigma. Initially the guerrilla movement was simply an unknown number of small, largely uncoordinated gangs composed mainly of former fighters of Kosovo's UÇK from both Kosovo and Macedonia.<sup>44</sup> Yet, by spring 2001, these groups became unified under the military command of Gëzim Ostreni and political leadership of Ali Ahmeti. Soon, UÇK found large support among the disgruntled Albanian youth in Macedonia and a vast military arsenal in Kosovo and Albania.<sup>45</sup> The public began to learn more about UÇK after they attacked on January 23, 2001 a police station in Tearce, Tetovo region (Rusi 2004).

Many commentators, overlooking the domestic factors that caused the Macedonian conflict, tend to see it as imported from abroad. Some consider it as an aggression from Kosovo, and others view it more as a spillover from battles fought by ethnic Albanians in Southern Serbia. However, Ilievski (2007: 6), a Macedonian author, gives this more complex and accurate explanation:

[W]ithout weapons smuggled from Albania in 1997 and from Kosovo in 1999, without organizational and logistical support from Kosovo, and without unrestricted crossing of the Macedonia-Kosovo border, the armed conflict of 2001 could not have occurred. Nevertheless, once the conflict began, organizational and logistical support from Kosovo alone would not have achieved the effect it did if ethnic Albanians within Macedonia had not joined the insurgency as well.

Initially, the group's goals and organizational structure were vague, but later they became consolidated along with their military might. UÇK began by declaring that they would target "the uniform of the Macedonian occupier until the Albanian people are freed." However, a few months later, contradicting messages began to air.<sup>46</sup> Perhaps Communiqué No. 4 which followed an attack in Tearce showed that, by then, UÇK was

becoming unified and its political goals streamlined. The Communiqué pointed out that, “[s]o far, the Albanians in Macedonia, have sought our rights through dialogue in a constitutional and peaceful way” but “[o]ur demands have been ignored.” Outlining UÇK’s ultimate goal, the Communiqué stated that “[UÇK] will fight until Macedonia constitutionally becomes a Macedonian-Albanian – or Albanian Macedonian – state,” and concluded: “we are in favour of preserving Macedonia’s sovereignty and territorial integrity. We respect NATO’s interests in Macedonia and especially those of the USA.”

Although by the end of winter 2000-2001 the Macedonian authorities announced the defeat of the rebels (Daskalovski 2006), in Spring 2001 the guerrillas swept the western part of the country. By mid-summer 2001, they took control of most of the Albanian inhabited territories including Aračinova [Haračinë], putting most of the Macedonian central institutions and industries around the capital within range of their mortars and surrounding Skopje [Shkup].<sup>47</sup> At that point, as the Albanian guerrillas established a permanent presence in almost all the relevant sites with a majority of Albanian population.<sup>48</sup>

Paradoxically, Albanian elites’ strategy of combining “working within the system” with threats to opt out of the system and explore more radical options provided mixed signals to the public. On the one hand, the expansion of Albanian rights during VMRO-PDSh coalition rule demonstrated that Macedonian elites were not unified, confused about how to advance the nation-state, and could conceivably compromise under certain conditions. On the other hand, the nationalistic and often radical rhetoric of the Albanian representatives in government signaled that Albanians of Macedonia were not really interested in a unified state (Ragaru 2007: 2). The same can be claimed for the Macedonian elites: the need for social peace during harsh periods of economic austerity, a long-lasting standoff with Greece about the country’s official name, and the country’s bid for EU membership compelled the nationalistic VMRO-DPMNE to pacify Albanians with some concessions. While certainly VMRO-DPMNE had not shirked its commitment to promoting Macedonia as the nation-state of the Macedonian people, its concessions toward Albanians were read by both Albanians and political opponents of Macedonians as signs of weakness.

The international reaction to the Macedonian crisis was remarkably swift, determined, and organized. Initially, the sudden appearance and growth of UÇK came as an embarrassment for Macedonia's international partners who had believed that the country had already established sustainable interethnic relations and, consequentially, political stability (Mincheva 2005). What is now commonly known as international community, was indeed a politico-diplomatic concert of the EU, US, NATO and OSCE, with each of the actors performing various parts of a strategy that combined consociational practices and "carrot-and-stick" approaches to different actors. Thus, the EU's effectiveness rested on the seductive offer of EU membership that concerned almost equally both ethnic groups. However, US and NATO effectiveness was based mainly on their capability of credibly bashing Albanians; indeed, the US' pivotal political and military role in NATO attacks against Serbian forces during the Kosovo conflict has ensured obedience to the US and NATO from the Albanian guerrillas.<sup>49</sup> Both the EU and NATO were seducing Macedonian elites with membership as a "carrot," and the membership refusal as a "stick." And finally, the OSCE, trying to find a role for itself, offered diplomatic and logistic assistance through its office in Skopje.

Specifically, the EU "carrots" sweetened for Macedonians when on April 9, 2001, as the crisis was exacerbating, the Union invited Macedonia to sign the Association and Stabilization Agreement even though the country was not close to fulfilling any criteria in both stability and associative capabilities. The US "sticks" were rattled against Albanian fighters. The Executive Order 13219, June 26, 2001 that ordered "the blocking of property and interests in property," and "the prohibition of the making or receiving by a United States person of any contribution or provision of funds, goods, or services" for a list of names with UÇK's most prominent political leaders and military commanders as well as some well-known Kosovar political and public figures.<sup>50</sup> As Ash reveals from his November 2001 interview with the leader of UÇK Ali Ahmeti, the latter was mindful of the existence of the Geneva Convention and the Tribunal of Hague.<sup>51</sup>

The EU took over a leading role in resolving the conflict. As the PDSH leader Arbën Xhaferi stated, troops and weapons did not stop violence; yet violence was stopped by "the hope provided by the EU that it would intervene in starting political negotiations" (cf. Daskalovski 2006: 107). On March 19, 2001, the EU foreign ministers agreed on a

package of measures that would provide assistance to Macedonia, including assistance on border control and the promotion of interethnic relations. At the European Council of Stockholm, March 23-24, 2001, the EU sent supportive messages to Macedonian leaders and warning notes to Albanian leaders both in Macedonia and in Kosovo. To President Trajkovski and the FYROM government, the EU affirmed its “solidarity” and urged them “to continue to respond with restraint.” The EU asserted its support for “the sovereignty and territorial integrity of FYROM and the inviolability of borders in conformity with OSCE principles.”<sup>52</sup> They also stated their determination to pursue collective and individual efforts in close cooperation with NATO to help the authorities cope with the present situation. Most importantly, the EU noted that “effective internal political reforms and *consolidation of a true multiethnic society are indispensable*.”<sup>53</sup>

Waging “the stick,” the Union reaffirmed strongly that “there is no future in our Europe for those who follow the path of intolerance, nationalism and violence,” that “the Union will not give assistance to those who take this course,” and that it “will only support those who choose clearly peace, democracy reconciliation and regional cooperation.” Offering “the carrot,” the Council iterated that, as previously agreed during the EU-Western Balkan Summit of Zagreb, November 24, 2004, Macedonia “will be the first state of the region to be linked to the European Union through the Stabilisation and Association Agreement which will be signed on 9 April.”

Financial pledges ensued as to ensure the sweetness of “the carrots”: the EU pledged to Macedonia a financial package of 40 million Euros through its Community Assistance for Reconstruction, Development and Stabilization (CARDS) program for the Western Balkans; some 50 million Euros in macro-financial grants and loans were promised by IMF, conditional to a standby agreement between the International Monetary Fund (IMF) and Macedonia. On April 5, the Union granted the country the status of most favored nation; and on April 9, Macedonia became the first country included in the so-called Stabilization and Association zone to sign the Stabilization and Association Agreement with the EU (Daskalovski 2006: 108). Meanwhile, EU employed “sticks” as well, both during negotiations to reach an agreement for a political solution and during political debates over the implementation of the Ohrid Agreement. While at the beginning

of the conflict Western governments firmly criticized UÇK, they also recognized the need for a political solution to the problematic status of Albanians in Macedonia.

The EU “carrot and stick” approach continued even after the signing of the Ohrid Agreement. To assist Macedonia in the implementation of the Ohrid Agreement, the Union opened in 2001 the Office of the EU High Representative.<sup>54</sup> Since implementation the implementation has met fierce resistance by both the Macedonian public and segments of its elite, every legal and institutional change required a mixture of international pressure and “carrots” (Ragaru 2007: 9). Thus, in the fall of 2001, the EU used a “hard stick” against Macedonian authorities who refused to pass required constitutional amendments. Then EU High Representative Alain Le Roy succeeded to postpone until March 2002 a donor conference that was initially scheduled for October 2001, with the hopes that Macedonians would pass the constitutional amendments and the belated Law on Local Self-Government. The constitutional package finally passed on November 16, 2001, amidst fierce parliamentary debates over many topics that were previously agreed upon in the Ohrid Agreement. The Law on Local Self-Government passed in January 2002 (Ragaru 2007: 10).<sup>55</sup>

NATO’s role stemmed from its military presence in the neighboring Kosovo. The alliance sought to prevent the destabilization of Kosovo. NATO’s Secretary General, George Robinson, was often criticized by Macedonian government who believed the NATO forces under the KFOR mission in Kosovo were not doing enough to control the border between the two countries. The Alliance strengthened its involvement in the crisis by appointing a special representative in the country, the German Ambassador Hans-Joerg Eiff and a political envoy, Pieter Feith. It also sent military assistance to the Macedonian government, and NATO’s US General Joseph Ralson asked the US Congress for additional troops for the KFOR mission in Kosovo as an extension of the NATO mission in Macedonia. Even though NATO member countries wanted to avoid another open-ended, expensive peacekeeping mission like those in Kosovo and Bosnia, the Alliance responded positively to President Tajkovski’s request to demilitarize UÇK under the condition that political factions in *Sobranie* signed a peace agreement. It took more than two months for all the NATO conditions to be fulfilled, and the alliance decided on August 21<sup>st</sup> to deploy some 3100 troops in order to observe UÇK’s disarmament.<sup>56</sup>

Concurring with the EU and NATO positions, the US emphasized the need to address “the legitimate concerns of minorities.” On March 23, President George W. Bush released a statement, asserting that “[t]he United States joins its allies and the United Nations in strongly condemning the violence perpetrated by a small group of extremists determined to destabilize the democratic, multi-ethnic Government of Macedonia,” and that “[t]he United States and its allies have a longstanding commitment to the sovereignty and territorial integrity of Macedonia.”<sup>57</sup> President Bush expressed support for “NATO's effort to assess Macedonia's immediate security needs,” and pledged military and technical assistance to the Macedonian Government. Later, in a meeting in the White House with President Trajkovski, President Bush also pledged \$10 million for the newly established multilingual Southeast European University in Tetovo. On April 12, the Secretary of State Colin Powell visited Skopje to express the US’ support for the country’s territorial integrity and the need to find a political solution to the crisis. Moreover, even though in his June tour to Europe President Bush had dismissed the possibility of US personnel participating in a NATO force that would observe the disarmament of UÇK, 500 US troops eventually joined the NATO Essential Harvest mission.

Compared to the EU and NATO, OSCE had a logistic “advantage” in dealing with the Macedonian crisis. Since September 1992, OSCE had the Spillover Monitor Mission to Skopje, and OCSE High Commissioner on National Minorities Max van der Stoep had been very active in negotiating solutions to Albanian grievances with Macedonian authorities. The Mission deserves credit for closely following the crisis on the ground and reporting human rights abuses by both sides. On March 21, 2001, the OCSE Chairman-in-Office, Romanian Foreign Minister Mircea Geoana appointed the US diplomat Robert Frowick as his Personal Representative. Ambassador Frowick became very active in his efforts to hold direct talks between the government and UÇK. As the Macedonian partners in government rejected his invitations, Frowick organize talks between their Albanian government partners and UÇK, hence applying a strategy that has worked in the Southern Serbian conflict (Daskalovski 2006: 113). His attempts resulted in the Prizren Declaration, May 22, between PDSH, PPD, and UÇK, which, being denounced and doomed notwithstanding, opened the way to the political solution of the crisis.

The peaceful withdrawal of the UÇK from Aračinovo was a clear signal that its leaders accepted negotiation. UÇK agreed to a settlement that would satisfy the Prizren Declaration. After intense negotiation, the four main Macedonian and Albanian political parties, VMRO-DPMNE, *Socijaldemokratski Sojuz na Makedonija* (SDSM) [Socialdemocratic Union of Macedonia], DPA and PPD met in Ohrid, less than 10 miles from the Albanian border, to agree for a political end of to the ethnic hostilities. On August 8, 2001, after eleven hours of intense negotiations under the mediation of EU special envoy François Léotard and the special US envoy to Macedonia James Pardew, an agreement for constitutional changes that would improve the status of Albanians in the country known as the Ohrid Framework Agreement (hereafter Ohrid Agreement) was reached. It was signed by the Macedonian President Boris Trajkovski, Prime Minister Branko Cervenkovski, *Sobranie* Member and PDSH Chairman Arben Xhaferi, and *Sobranie* Member and PPD Chairman Imer Imeri.

It is clear that an agreement between the Macedonian majority and Albanian minority would have been impossible without the presence of international actors. Arguably, the Ohrid Agreement, achieved under the strong pressure and carrot-and-stick approach of an international concert of the EU, NATO, OSCE and the US, saved Macedonia from the brink of a full-scale civil war (Marko 2004/5; Daskalovski 2006; Schneckener 2002). In this case, the “carrot” was dangled by the EU in the shape of the Stabilization and Association Agreement with Macedonia, whereas the “stick” was the threat potential of international indictments for both rebels and government officials in the Hague Tribunal. The difficulties involved in reaching and signing the Agreement were clear indicators of the difficult road in the implementation phase.

The Ohrid Agreement consists of eight topics. Under Topic 1, Basic Principles include prohibition of use of violence in pursuit of political aims; preservation of territorial integrity and the unitary character of the state; preservation of the multi-ethnic character of Macedonia’s society; constitutionally guaranteed democratic accountability; development of local self-government to encourage participation and promotion of respect for the identity of communities. Topic 2 regulates the cessation of hostilities. Topic 3 specifies the development of a decentralized government, including a revised Law on Local Self-Government in order to devolve powers in the areas of public services,



urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and health care; a provision for revising the boundaries of municipalities after completion of a new census; and a provision that foresees the selection of the local heads of police by municipal councils in order to make police responsive to the needs and interests of local population. Topic 4 regulates non-discrimination and equitable representation of communities in all central and local public bodies with the affirmative duty to correct present imbalances, in particular in the police. It provides a double majority vote for the election of one-third of the Constitutional Court judges, the Ombudsman, and three members of the Judicial Council. The double majority vote (the Badinter Principle) means that while the representatives of parliament represent a majority of the voters, they must also represent a majority of the minority populations not typically represented. Topic 5 stipulates the application of the double majority vote system for certain constitutional amendments, the proposed Law on Local Self-Government, and for laws which affect culture, use of language, education, personal documentation, use of symbols, local finances, local elections, the city of Skopje, and the boundaries of municipalities. Topic 6 regulates the use of languages in education and public bodies. The most important elements are further guarantees for mother tongue instruction in primary and secondary education and university level education in languages spoken by at least 20% of the population of Macedonia—that is, in fact, only Albanian. Moreover, affirmative action was to be continued in state universities until equitable representation was achieved. Topic 7 provides for the use of emblems of communities together with the emblem of Macedonia in front of local public buildings if the community serves as a majority population in the municipality. And, finally, Topic 8 provides guidelines for timely implementation of the Agreement.

The implementation of the Ohrid Agreement represented a major challenge for all signatories. First, it was a challenge for Macedonian politicians who had to operate in a climate of open public hostility toward the Agreement. A 2003 UNDP-*Kapital* Center for Developmental Research survey revealed strong resistance to the implementation of the Ohrid Agreement from the Macedonian public, satisfactory support by Albanians, and only lukewarm acceptance by other minorities (TABLE 4.2). Secondly, the Agreement's implementation presented major legitimacy challenges for Albanian parties in the

governing coalition, PDSH and PPD. Although their leaders were signatories to the Agreement, it was already well known that only the military pressure wielded by UÇK managed to shake the status quo politics in Macedonia.<sup>58</sup> PDSH and PPD were left to fight a difficult political where every slide backwards would be easily perceived as incompetence at best and treason at worst. Under the unbearable weight of such a challenge, Arbën Xhaferi and Menduh Thaçi (PDSH) and ex-prime minister Georgieski (VMRO-DPMNE) launched a direct assault on the Ohrid Agreement, declaring it “dead” and calling for the country to be partitioned. At its annual congress in July 2003, the PDSH demanded further constitutional changes which would eliminate the Ohrid compromise, including a bicameral parliament, an Albanian vice-president, ‘consensual

TABLE 4.2 RESULTS FROM THE 2003 UNPD AND KAPITAL SURVEY

Question: Do you support/not support the Ohrid Agreement?				
	Ethnic Background			Total
	Macedonian	Albanian	Other	
	Col %	Col%	Col%	Col%
1 Strongly support	5.7	68.1		20.5
2 Support somewhat	32.3	23.5	28.3	30.1
3 Somewhat not support	17.2	1.6	20.8	13.8
4 Do not support at all	37.9	1.2	22.6	28.9
5 Refuse	0.4		1.9	0.4
6 DK	6.5	5.6	7.5	6.3

Source: United Nations Development Programme (UNDP) and *Kapital* – Center for Development Research (2003).

democracy’ to allow a fuller veto power, and the right to self-determination.<sup>59</sup> As for the international community, their challenge consisted of maintaining coherence in the face of Balkan political tricks, lack of commitment by the signatories to the agreements, and the absence of reliable domestic partners.

Marko (2004) recognizes that the Ohrid Agreement has led to considerable improvements in equitable representation of Albanian Macedonians in public bodies as well as increased enrollment of minority students. Reportedly,

the number of Albanian Macedonians paid from the state budget increased from 11.65% in 2002 to 14.54% in December 2004. In the health organizations, not paid by the state budget, the increase was from 5.72% to 7.34%. Much more impressive are the results in the security forces where the numbers of Albanian Macedonians between 2001 and 2004 increased in the Ministry of the Interior from 3.6% to 13.31%, the Criminal Police from 3.9% to 10.37% and in the armed forces from 2.25% to 10.18% (Marko 2004/5: 11).

However, while Marko (2004: note 50) praises these advances and credits the improvement on the introduction of community policing and a system of mixed police-patrols in Albanian-Macedonian territories, other authors have pointed out the increasing ethnic *clientelism* in public administration appointments (Lili 2009; Lebamoff and Ilievski 2008; ESI Macedonia Security Project 2002).<sup>60</sup>

Marko (2004) reports better success in implementing the Agreement in education:

For pupils who are part of the Albanian and Turkish communities, the education process in kindergarten groups and primary schools is carried out in their mother tongue. In secondary education the education process is performed in Macedonian, Albanian and Turkish, whereby Macedonian Albanian pupils can receive instruction in Albanian in six municipalities and the City of Skopje. Now, 18.57% of Albanian pupils receive secondary education in their mother tongue. As far as university enrolment is concerned, due to the establishment of two new universities, the figures show a tremendous increase. The number of Albanian Macedonian undergraduate and graduate students in 1992

was 2.23%, and this jumped to 15.5% in 2004-5. The number of Turkish students, however, increased only slightly from 0.65% to 1.34%, but the share of Serbs actually dropped from 3.19% to 1.52%.

When the already delayed constitutional changes entered into the parliamentary agenda in Autumn 2001, it became clear that constitutional reform in Macedonia had become a zero-sum game (Brunnmauer 2002; Loomis, Davis and Broughton 2001: 17). Macedonian leaders perceived Albanian gains as detrimental to the status of Macedonians and therefore maneuvered to limit their gains. There were two major issues that emerged: the new preamble of the Constitution, and the relationship of the religious communities with the state and each other. The drafted preamble referred to “the citizens of the Republic of Macedonia,” thus avoiding any specific reference to distinct ethnic groups.<sup>61</sup> However, when the draft-preamble was leaked to the public, it unleashed anger among the Macedonian masses, intellectuals, politicians and the media who strongly opposed the fact that the preamble did not nominally mention the Macedonian people. Macedonians have always quarreled with Albanians over the point that Macedonia was the only motherland they had, while the Albanians already had a motherland, Albania proper. Now Macedonians saw the deletion of their name from the preamble as a sign that they were losing their country, the only country that recognized them as a people. Albanian political parties avoided the topic of negotiation fearing that it would lead to an unraveling of the original agreement, but two Macedonian opposition parties, Democratic Alternative and the “Real” VMRO as well as politicians from VMRO-DPMNE opposed the new Preamble which according to them extinguished the historic development of the Macedonian state (cf. Brunnbauer 2002: 11).

International actors became involved once again. The EU's special representative in Macedonia François Léotard asked for help from the European Commission for Democracy through Law (the Venice Commission) in an attempt to bolster the constitutional.<sup>62</sup> President Trajkovski, in turn, asked the US President George W. Bush to facilitate a compromise. Yet, there were the NATO Secretary General Lord Robertson and EU High Representative for Common Foreign and Security Policy Javier Solana who

negotiated the Preamble that later was passed by the *Sobranie*. The approved Preamble states:

The citizens of the Republic of Macedonia, the Macedonian people, as well as those citizens who live within the borders of the Republic of Macedonia and are members of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Roma people and of other peoples, take on themselves the responsibility for the present and the future of their fatherland (cf. Brunnbauer 2002: 11).

The second contested issue arising from the 1991 Constitution was the special relationship that it created between the Macedonian Orthodox Church and the Macedonian state. A new Article 19 was therefore drafted as a result of the Ohrid Agreement.<sup>63</sup> Although the problem seemed to be resolved by simply mentioning the Islamic Religious Community in Macedonia and the Catholic Church, the very fact that these religious groups gained an equal status with the hitherto privileged Macedonian Orthodox Church provoked criticism by the latter. Instead, the Church argued that “it should be granted special status at least in Macedonia, since it was not recognized by other Orthodox Churches” (Brunnbauer 2002: 11). Consequentially, an amendment was made with the words “as well as” between the Macedonian Orthodox Church and the other religious institutions, in order to make it stand out and address the concerns of the Church and the ethnic Macedonian Orthodox majority (Ilievski 2007: 22).

The implementation of the Ohrid Agreement, especially the projected constitutional amendments, showed how far apart Macedonians and Albanians still distrust each other. The process also revealed that for Macedonia to be a stable democracy it would require assistance from its international sponsors to either force negotiation and compromise or condition and enforce consociational practices.

#### *A Consociational interpretation of the Macedonian crisis and its aftermath*

A consociational explanatory model would suggest that the Macedonian ethnic conflict erupted because both Albanian and Macedonian elites lost cohesion.<sup>64</sup> The fact that among Albanians, public support for UÇK was not automatic (Raganu 2007: 8), and that

*Bashkimi Demokratik për Integrim* (BDI) [Democratic Union for Integration] founded from its legacy after the Ohrid Agreement never managed to incorporate the entire Albanian electorate shows the split that existed among Albanian elites. As Rusi (2004) reveals, among the interviewed UÇK members, there were consistently critical of Albanian politicians in Macedonia. When Ali Ahmeti talks to foreigners these days, he bluntly describes Albanian politicians as “looking after their own interests” (Ibid.). Other members of the former UÇK continue to be openly critical of the PDSH. When the Government of National Unity was established on May 8, 2001, the Vice President of the Parliament Iljaz Halimi from the PDSH was accused by PPD sources of insisting that the PPD publicly distance itself from the UÇK as a condition for joining the new coalition. On March 20th while still in opposition, the Partia Demokratike Popullore (PDP) [Democratic People Party] signed a joint statement with the DPA, calling on the UÇK to lay down their arms (cf. Rusi 2004). Even now, nine years after the conflict, the split remains deep and, occasionally, the political debate among Albanian politicians and their partisan supporters degenerate into sheer violence (Lili 2009).

The Macedonian elites were divided as well. Premier Lubče Georgievski and the Minister of Interior Ljube Boškovski supported a military solution to the crisis while President Boris Trajkovski and Branko Cervenkovski’s SDSM called for compromise and negotiation. A major crisis occurred on May 22, 2001 when, under the brokerage of the OCSE envoy Robert Frowick, an American diplomat, leaders of PDSH and PPD met with UÇK leaders in the Kosovo city of Prizren. Frowick had been involved in long and difficult negotiations with UÇK following a request from President Trajkovski. With VMRO-DPMNE and Primer Georgievski rejecting direct talks with UÇK, the latter signed the plan only with the Albanian government partners.

The document produced by the meeting, titled “Declaration of the Albanian Leaders from Macedonia Regarding the Peace and Reformation Process in the Republic of Macedonia,” was signed by Ali Ahmeti, the political representative of the UÇK as well as Imer Imeri and Arbën Xhaferi, the leaders of the PPD and PDSH respectively. It stated that that the various Albanian leaders, mindful of an historic juncture in Macedonia, agreed to act in the national interest toward a common goal: reform of the state to create a democracy for all citizens and national communities. The consensus among Albanian

leaders was to be based upon a number of shared principles: support for the territorial integrity and multi-ethnic character of Macedonia; a rejection of “ethnic territorial” solutions to Macedonia’s problems and a recognition that ethnically-based separatism would damage the citizens of Macedonia as well as threaten peace in the region; a recognition that there could be no military solution to the problems facing the Republic of Macedonia; a commitment to transforming the Republic of Macedonia by means of closer European and Atlantic integration; and finally, a willingness to accept the US and EU as facilitators to resolve internal problems (cf. Rusi 2004: 8). Moreover, the signatories also pledged to work together for a set of specific reforms. These included a review of amendments to the constitution of Macedonia, unrestricted use of the Albanian language as one of the country’s official languages, proportional ethnic presence in the institutions of the state, enhancement of the authority of local government, complete secularization of the constitution and state, and the introduction of mechanisms to ensure a consensual resolution of issues of national interest involving ethnic rights (Ibid).

However, Frowick’s plan faltered when the Prizren Declaration was made public. Key representatives of the international community were also opposed, most notably Mark Dickinson, then the British Ambassador to Macedonia, who at the time was also representing the EU High Representative for Common Foreign and Security Policies, Javier Solana. Even though private EU sources considered the plan “very very good, and in line with the international community” (Daskalovski 2006), wrong timing and lack of coordination doomed it. A storm of Macedonian and international criticism rose against Ambassador Frowick, OSCE, the US, and the Albanian leaders. The daily paper *Nova Makedonija*, for example, ran a headline announcing “Xhaferi and Imeri sign a document betraying Macedonia.” President Trajkovski added: “These meetings are unacceptable and run against the government and their own [the PPD and DPA] commitment not to negotiate with terrorists.” The PDSH and PPD were urged by Macedonian political parties to renounce the signatures of their leaders. Robert Frowick was instructed to leave the country in disgrace. The rejection of the Prizren Declaration as a basis for talks obstructed the discussion process between political parties that President Trajkovski had overseen.

The Prizren negotiations caused a major crisis within the governing coalition, and it took long and tense negotiations between EU High Representative Javier Solana, senior

US diplomat James Swigert, and President Trajkovski to finally persuade the Macedonian and Albanian partners in the coalition to agree on May 29 to resume political dialogue. A June 2001 meeting with Solana and Swigert concluded with an agreement. EU diplomatic pressure grew since Macedonian party leaders were expected to report their political progress to the EU General Affairs Council to be held on June 25 (Daskalovski 2006: 104). By that time, it appears that others reached the conclusion that nothing could be resolved if the UÇK were excluded from the negotiating process. Even Prime Minister Georgievski later acknowledged that some of the conditions set by Prizren would have to be met, when he said in a television interview “it is probable that we will have to drop the preamble to the Constitution, or announce a second constituent nation. It is likely that we will have to announce a second official language” (cf. Rusi 2004: 9).

By the very end of the 1990s and early 2000s, feelings of political and economic frustration combined with euphoria over the Albanian triumph in Kosovo resulted in an Albanian population in Macedonia growing increasingly angry and impatient. Despite their expanding role in the affairs of the country, Albanians in Macedonia found themselves the only Albanian entity in the Balkan that was disenfranchised. Radicalized Albanians who returned from the Kosovo War found themselves alienated from a political system built on a dual ethnicity-partisanship criteria of participation (Ragaru 2007). By then, Albanian political elites had lost much of their representative legitimacy and large sections of the Albanian population were searching for other voices to represent them. As Ragaru (2007: 8) argues, awareness of such a cleavage between Albanian political elites and their voters is extremely important in understanding post-Ohrid political and social dynamics.

Macedonian elites lost legitimacy as well. Several times, Macedonian politicians were forced under the pressure of massive and violent Macedonian crowds who viewed closed doors negotiations as secret deals to “sell over the country” (Daskalovski 2006). For instance, negotiations between the coalition partners that began on June 25 broke up the next day due to angry Macedonian demonstrations in Skopje. A month later, masses of angry Macedonian protesters demonstrated in Skopje against what they perceived as a “constant Western support to Albanian Militants” (Daskalovski 2006).



The Ohrid Agreement aimed to introduce consociational practices and restore such practices where disrupted. The Agreement was designed in such a way that would ultimately result in a peaceful yet separate cohabitation among the different ethnic groups. While on the one hand the principle of equitable representation in state institutions would expose state employees to individuals of different ethnic backgrounds, local decentralization reforms and higher education reforms would likely result in increasing the distance between ethnicities (Ragaru 2007). However, democratic stability, not ethnic harmony, was EU's ultimate goal. The Ohrid Agreement was designed to ensure that the elites were unified on the issues concerning EU-Macedonian negotiation. For example, the intention of the dual majority principle (Badinter Principle) was to simultaneously enforce consociational practices on each ethnic group/pillar of society. With that principle, the EU could be confident that both Macedonians and Albanian elites would enter negotiations with the EU equipped with unified proposals.

Some of the modifications of the constitutional amendments that occurred during parliamentary debates strengthened the multiethnic emphasis of Macedonia, hence bringing to the process some additional consociational practices. First, concerning the symbolism of the Preamble, the Ohrid Agreement stipulated the replacement of concepts in the 1991 Constitution which Marko (2004) considered to be a mixture of nation-state and state-nation concepts with solely a state-nation concept by no longer referring to a Macedonian nation and other ethnic groups, but only to citizens. The agreed Preamble now states: "Citizens of the Republic of Macedonia, the Macedonian people, as well as the citizens that live within its borders, who are part of the Albanian people, Turkish people, Vlach people, Serb people, Roma people, the Bosniak people, and others ... have decided to establish the Republic of Macedonia as an independent, sovereign state" (Amendment IV of the constitution, cf. Marko 2004: 9).<sup>65</sup> The EU accepted this modification: the multiethnic constitutional design is a consociational practice.

The implementation of the Ohrid Agreement navigates between the Scylla of federalization and the Charybdis of centralization and therefore affects major intra-ethnic issues. However, it seems that the EU has found this tension compatible with consociational practices since, apparently, another country, namely Italy, has resolved the issue through devolution rather than federalization. People close to Ali Ahmeti have told

me what Timothy Garton Ash reveals in his article: generally, the Albanian elites were interested only in expanding Albanian rights within a unified Macedonia.<sup>66</sup> As several Albanian politicians in Macedonia have told me in time and again, in the case of a partition, Albanians would have been the ultimate losers and they therefore needed to better consolidate demographically and politically in order to become better positioned for the politics of partition. Simply speaking, Albanian nationalists did not want to secede from Macedonia and leave behind two of their historical cities, namely Skopje (in Albanian Shkup) and Bitola (in Albanian Manastir). While this attitude of the Albanian leaders seem to avoid ethnic clashes until, arguably, Albanians might become a majority in Macedonia due to their high birth rate, it also gain some time for peace as emerging crosscutting cleavages might mitigate ethnic divisions.

This nationalistic platform is reflected in the implementation of the Ohrid Agreement. One of the most contested interethnic issues in Macedonia has been the use of other languages besides the Macedonian language in education and administration. The new regulations enabled the use of more communities' languages; in local self-government the 50% threshold was reduced to 20% and the same threshold was introduced for state administration operating in both local and central level for persons who live in such municipalities with a 20% share of a community. Although Albanian can now be used again in parliamentary sessions, this does not mean that Albanian has become an official national language like Macedonian. Their demographic map is clear, and they want to consolidate their political authority over the territories where they maintain a significant presence. This makes political struggle necessary in order to redraw the municipal boundaries to include Albanian Macedonian villages in order for the community to reach the 20% threshold. Following such a policy, Albanians were able to reassert their historical presence in the capital city of Skopje, which, as will be discussed in the next Chapter, become bilingual by adding to its municipality neighboring Albanian inhabited suburbs. Appendix B shows the demographic dynamics in Macedonia since the 1981 census.

With the practical loss of control over some of the most productive and economically active administrative-territorial units in the country such as the Albanian habited municipalities of the Northwest, obviously the Macedonian elites viewed it futile

to resist constitutional changes regarding language and the use of national symbols. Thus, the constitutional amendments regarding education in the languages of communities, Article 48(3), and Article 48(1) regarding the use of the flags, were passed with minor changes.

As Marko (2004: 10) points out, the most important elements of group rights according to the model of consociational democracy were the provisions for equitable representation and the double majority vote system in parliament instead of a simple majority. Article 8 of the Constitution guaranteed equitable representation of citizens in public bodies at all levels and in all areas of public life as one of the fundamental values of the constitutional order and in Article 77(2) insofar as the Public Attorney has to safeguard this principle. Yet equitable representation on the basis of the double majority vote system is also foreseen for the composition of the Security Council, the Judicial Council and the Constitutional Court. *Sobranie* was entitled to establish a Committee for Intercommunity Relations composed of seven Macedonian and Albanian members each and five member each from the Turk, Vlach, Romanie and two other communities. The double majority vote system is also foreseen according to Article 114(5) for laws regarding local self-government, i.e. the laws on local self-government, local finances, local elections, boundaries of municipalities, and the city of Skopje. Article 69(2) enumerates subject matters such as culture, use of languages, education, personal documentation, and use of symbols which affect ethnic identities and for which again a double majority vote is foreseen (Ibid). However,

although (or because) representatives of the communities are regularly elected into parliament due to the ethnically split party system and interethnic government coalitions are formed on a regular basis in actual practice, the OFA and respective constitutional amendments did not include a system of constitutionally fixed seats for ethnic groups in parliament or posts in the government connected with a system of veto powers for specific groups. This is in marked contrast to the constitutions of Slovenia, Croatia and Bosnia-Herzegovina (Ibid).

Hence, the consociational arrangements foreseen by the Ohrid Agreement are much weaker and do not impose restrictions on individual rights such as the right to stand as a candidate (as in the Bosnian Constitution) which excludes from membership to certain high political position in the country anyone who is not a Serbs, Croats, and Bosniaks (Ibid). However, under the conditions discussed above, this posed no problem to Albanians since their claim rests only over the municipalities where they represent or aspire to represent a majority or substantial minority. Marko criticizes Daskalovski for missing the point when he considers the changes to the constitution as reflecting an “ethnification” of the Macedonian constitution and advancement of a political identity best described as “millet” or “ethnic” Macedonia which “does not support just solutions to problems in multiethnic societies” insofar as only “liberal nation building guarantees a culture of protection of national minorities.” According to Marko (2004: 11),

exactly this “liberal nation building with the protection of national minorities” ended up in the spiral of intensification of ethnic tensions analysed in the first chapter, since the main political problem was and still is that Albanian Macedonians do not consider themselves a ‘national minority’, but want to be an ‘equal partner’ in the state and nation-building process.

An account of Albanians’ achievements as they are stated in the Ohrid Agreement and the ensuing constitutional reform shows that EU consociational practices and the compromises that forged them came as close as it could to a more stable democracy. First, the changes insist that all ethnic communities have formal equality as state and nation-building forces, as reflected in the language of the Preamble, thus making Macedonia a multiethnic, not bi-national state of Slav and Albanian Macedonians.<sup>67</sup> Second, the changes result in equitable representation for all groups in the civil service, particularly Albanian Macedonians, but not full veto power, in parliamentary decisions. In this respect, Marko (2004: 12) notes, the double majority vote system is a much weaker mechanism than comparable provisions regarding veto powers in the constitutions of other ex-Yugoslav republics. However, I have argued that, as a consociational practice, the Badinter Principle aimed at forcing unity within social segments themselves. In the

circumstance of erosion of legitimacy of elites, the double majority principle would assure that different subgroups within the social segments unify around the decisions taken by their elites. Third, the lowering to 20 percent of the threshold needed for using a certain language in public administration and the judiciary reflected, a European “best practice” established by the Advisory Committee under the Framework Convention for the Protection of National Minorities (Marko 2004). Even though the new language provisions did not give the Albanian language “full equality,” it served the purpose of redrawing administrative borders in a way that would assert the Albanian presence. Fourth, while some authors (see Marko 2004: 12) deplore the rejection of the Albanians’ aspirations for territorial autonomy or federalization of the country, and that the implementation of the Ohrid Agreement has *ghettoized* the country along ethnic lines, that ghettoization might have served the elites very well. Generally speaking, the Ohrid Agreement is a powerful tool for ethnic elites to strengthen their grip on respective social segments/pillars.

The application of EU membership conditionality to Macedonia represents the case of Macedonia building institutions that would be compatible with consociational practices in two levels. The first level is the national level: the Ohrid Agreement and the ensuing constitutional reform intended to implement consociational practices needed to pacify the ongoing ethnic conflict, and transform Macedonia to a stable democracy. As the historical process tracing made clear, not only is Macedonian society deeply divided, but each of the segments/pillars is also deeply split within itself. First, the analysis shows that the situation escalated to conflict because of the radicalization of the Albanian political elite. There is no clear evidence that Albanian leaders radicalized the masses; yet, the shift of mass sympathy in the course of the 1990s from PPD to PDSH to UÇK as well as the electoral performance and resilience of the more moderate PDSH show that the Albanian segment in Macedonia is divided. Every time that a more radical Albanian movement appears, the political support of the majority of the Albanians seems to shift to that movement. However, as long as Albanian leaders continued working within the system to carve an Albanian space within Macedonian society, their political discord and rivalries did not threaten the existence of the country. That happened only when the UÇK struggle appeared to lead to a possible forceful division of Macedonia. As long as

Albanian elites were unified, Macedonian democratic stability appeared to be sustainable; once rifts appeared among Albanians, however, they echoed similar rifts among Macedonians. By the same token, Macedonian elites are also divided; their divisions concern not only how to tackle the Albanian minority, but also how to respond to the country's name crisis with Greece.<sup>68</sup> Constitutional reforms following some consociational practices would help to unify Macedonian elites as well.

Moreover, rifts among Albanian elites reflected the frustration among Albanians regarding their social status in Macedonian society. The division between elites from different ethnic backgrounds reflects deep ethnic divisions within Macedonian society. The rifts within each ethnic group would make agreement between ethnic groups impossible because political deals can be easily interpreted as treason by elite segments left outside of the proceedings. But unified ethnic elites operating under frameworks such as the Ohrid Agreement and institutional settings such as the amended Constitution would give ethnic elites the opportunity to negotiate co-existence with other elites. The Ohrid Agreement and the Constitution serves now as unifying grounds for the country's elites.

The second level is the international level, that is, the EU-Macedonia level. In order to facilitate the integration of Macedonia with the EU institution, the Union needs to negotiate with a unified Macedonian segment/pillar that is receptive of the EU consociational practices. This need would have not been an issue had Macedonia not aspired to the EU membership, and institutions receptive to consociational practices only for guaranteeing domestic stability would have been enough. However, in the Macedonian case, institutions receptive to consociational practices do not only serve domestic stability but also the convergence of the Macedonian stability to a unified segment/pillar. The amended Macedonian Constitution offered a chance to satisfy both of these needs. The preservation of the unitary character of the Macedonian state on the one hand, and the conversion of Macedonia from a nation-state to a multiethnic country on the other, was a compromise that did not leave everyone totally satisfied, as a real compromise should. Since elites' ability to compromise is a consociational practice, the EU has been able to conditioned institutions receptive to consociational practices.

*A sectorial contextual interpretation of the Macedonian constitutional reform*

The dynamics of the EU-Macedonian negotiations fit my proposed model. During the period 1989-1991, the Macedonian communist elites were hoping for the best (i. e., the maintenance of Yugoslavia), but preparing for the worst (i. e., the collapse of Yugoslavia and the consequential independence of Macedonia), they introduced constitutional arrangements that would help them to emerge as caring for the Macedonian people, enabling them to succeed politically. Albanian elites in Macedonia were weak, unprepared, institutionally debilitated, and unwilling to go beyond threats. Meanwhile, the EU was pleased with the Macedonian stability, and never pushed the Macedonian government for changes beyond slogans related to minority rights—while also rebuking Albanians for threatening the stability of the country.<sup>69</sup> With the political will of Macedonian elites and the lack of interest from the EU, the former employed the majority principle to perform constitutional arrangements perceived as paramount to establishing the Macedonian national-state. However, while the 2001 conflict persuaded the EU about the need for constitutional reforms, the ruling Macedonian elites resisted. At that point, the EU became highly interested in constitutional reforms in Macedonia, but only after the Albanian and Macedonian elites compromised can we say that also the ruling elites of Macedonia became positively interested in the reform. After difficult negotiations that involved the “carrots” of SAA and the “sticks” of potential dismemberment of Macedonian politicians as well as “carrots” of constitutional changes and “sticks” of being placed on the US’ ban list and Hague Tribunal for Albanian fighters, an agreement was finally reached and constitutional reform proceeded successfully.<sup>70</sup>

However, the sectorial contextual interpretation of the Macedonian constitutional reform suggests that in ethnically divided societies a constitutional reform is not always a good progress toward democratization unless it builds institutions receptive to consociational practices. While elites might pass a constitutional reform, it might not necessarily be considered as “good progress.” Only constitutional reforms that establish institutions compatible to consociational practices can be considered as a “good progress.” In a divided society, swift constitutional reforms without the support of the most relevant societal pillars might lead to destabilization rather than democratic stability.

Table 4-3 summarizes the dynamics of Macedonian constitutional reform.

TABLE 4.3 DEVELOPMENTS IN MACEDONIAN CONSTITUTIONAL REFORM

PERIOD	SITUATION	EU LEADERS' INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1989		0	+	<b>Swift reform</b> and spillovers on other reforms. The Constitution of the Yugoslav Socialist Republic of Macedonia was approved in order to strengthen the position of the Macedonians both within their Republic and within Yugoslavia. Yet, they did not concern the status of other ethnic groups. These changes happened without any input from international actors.
1991		0	+	<b>Swift reform</b> and spillovers on other institutional reforms. The goal of the 1991 Constitution was the creation of a state that would serve as a nation-state to the Macedonians and a state of the citizens to other minorities. The ruling (Macedonian) elites supported the reform, but the Albanian minority opposed it. There is no evidence about any international interests and/or involvement in that reform.
2001		+	--	<b>No reform.</b> The country slipped into ethnic conflict and, obviously, the EU and other international actors became increasingly interested in a constitutional reform that would implement consociational practices to bring about democratic stability. Yet, the Macedonian ruling elites were reluctant to undertake such reforms. Finally, the reform was agreed with the Ohrid Agreement.
2003		+	+	<b>Good progress</b> and spillovers on other institutional reforms (local decentralization, judiciary, security forces, public administration, and education). This is the case when both the EU and domestic ruling elites converged to positive preferences for the reform.



## Conclusions

This purpose of this chapter was to empirically demonstrate how the EU employs membership conditionality to help its aspirant countries from the Balkans to conduct institutional reforms that would produce institutions receptive to the EU consociational practices. In a unified society such as Albania, the main goal is to establish institutions that would be receptive to the EU consociational practices during the foreseeable process of the internal integration of the country with the EU institutions. In this case, the purpose is not to unify the segment/pillar but to acquaint and enable it to operate with consociational practices. In the case of Macedonia, the conditioning of constitutional reforms implies the establishment of a constitution that would serve both the purpose of creating the unified segment/pillar and the enabling of this brownand processes. In this case, the consociational practices affect institutional behavior in two levels. At the national level, consociational practices guarantee democratic stability and social cohesion; at the international/EU level, these practices help the integration of Macedonia in the EU without threatening the EU democratic stability.

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<sup>1</sup> Interview with Arbën Xhaferi, a Member of *Sobranie* and former Chairman of the Democratic Party of the Albanians in Macedonia. As Mr. Xhaferri states:

Macedonia was founded as an independent republic to resolve the Balkan context of that territory between the Bulgarians, Serbs, Greeks and, inescapably, Albanians. To escape the ethnic, geopolitical, and geostrategic frictions, first was created Yugoslavia I. Then in Yugoslavia II, that friction-generated territory was transformed in the Republic of Macedonia. Now the state was created; what was needed was the nation. In that formation process, J. B. Tito elaborated the strategy of the Slavo-Macedonian mechanism. While all other nationalisms in Tito Yugoslavia were suppressed and oppressed, the Macedonian nationalism was the only one that was encouraged. The cultivation of Macedonian nationalism, without repercussions and other hurdles, created among the Macedonians unrealistic and megalomaniacal aspirations which stifled the development of other peoples, especially the Albanians. Such stifling is manifested in all the realms of life: employment, culture, education, etc. During the 1980s came the prohibition of the Albanian topology, the naming of the Albanian babies with Albanian names, the elimination of classes when the lessons were conducted only in Albanian and the creation of mix ethnicity classes in only Macedonian language.

<sup>2</sup> See for instance interviews with citizens of Macedonia conducted by Lebamoff and Ilievski (2008).

<sup>3</sup> As the European Stability Initiative Report (2002: 5) notes in the case of the Macedonian mix populated city of Kičevo [in Albanian Kërçovë], “[t]he majority of urban Macedonians in Kičevo have acquired secondary or higher education. Their privileged access to the education system was the key to participating in the benefits of the socialist economy, in which jobs were strictly graded according to educational requirements.”

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<sup>4</sup> According to the European Stability Initiative Report (2002: 5) notes, “the exclusion of Albanians from the socialist sector and the benefits it offered have forced them to seek out economic strategies, chiefly labour migration and small-scale trade, which have left them much better equipped to survive the collapse of the socialist system.”

<sup>5</sup> A verse from the national anthem of Macedonia.

<sup>6</sup> Entire paragraphs of this section are borrowed from a paper that I have co-authored with Arben Imami (Peshkopia and Imami 2007).

<sup>7</sup> While the Major Constitutional Provisions stipulated the non-partisanship of the President of Albania, the constitutional amendments provided only a President who was not a Chairperson of any party. With Mr. Eduart Selami as his puppet Chairman of the PD, Mr. Berisha kept full control of his party.

<sup>8</sup> The Albanian viewers were accustomed of watching Berisha asserting on his tightly controlled national TV that his enemies’ reason of existence was for him to defeat them.

<sup>9</sup> During the presentation of his Government program on July 28 1997, the Albanian Prime Minister Fatos Nano stated: “The necessity of the constitutional reform through its drafting and its approval both in *Kuvend* and by a referendum lies on the widely accepted fact that changes of 1992 were retrograding while its latter amendments did not manage to be framed into an organic totality. The necessity of this cornerstone is linked with reform success in other institutions, with the establishment of an independent judicial system, the implementation of an efficient decentralization of the local governance, and the approval of stabile electoral laws that guarantee free and fair elections (The Archive of *Kuvend*; translated by R.P.).

<sup>10</sup> Typical for the EE institutional reforms is the involvement of more than one international actor. Often, besides the EU, other IOs play role in the sectorial development, with the CoE, OSCE, and some UN agencies among the most involved IOs. Among the state actors, the US plays a very important role especially in the Balkans since the lack of the democratic stability in the region might destabilize Kosovo, a country where the US has invested much of its international credibility.

<sup>11</sup> See “Reply to Recommendation 1312 (1997), Doc. 8139, Honouring of obligations and commitments by Albania,” (The Committee of Ministers, Adopted on 4 June 1998 at the 634<sup>th</sup> Meeting of the Ministers’ Deputies).

<sup>12</sup> Arben Imami, “Report in *Kuvend* on the Albanian Constitutional Draft,” (Archive of the *Kuvend*, November 1998).

<sup>13</sup> OSCE/ODIHR Election Observation Mission Report, “Republic of Albania Parliamentary Elections, 3 July 2005: Final Report,” Warsaw, November 7, 2005, p. 1.

<sup>14</sup> Ibid, p. 5.

<sup>15</sup> Ibid, p. 25.

<sup>16</sup> With the party as an impersonal candidate but also as the only possible donation recipient, there were less incentives for cronies of specific candidates to donate to the party headquarters. Moreover, candidates from proportional lists have less incentives to individually attack candidates of other parties’ lists since that would hardly benefit them. And finally, the impact of gangs in violating Albanian electoral process is related to the tribal loyalty of the clan to its member who happen to run for office. If the candidate is located in a “safe” place in the list, gang support for him would be redundant; but if he is not located in a “safe” position, gang violence might not be enough to shore him up to electoral victory.

<sup>17</sup> This was suggested as a revision of our common paper (Peshkopia and Imami 2007) by Mr. Imami who, during the process of Constitutional amendments was Premier Berisha’s Director of the Cabinet [Chief of Staff].

<sup>18</sup> See “Tragjedia e Gërdecit, rritet numri i viktimave” [The Tragedy of Gërdec, Increases the Number of Victims]. *Shekulli*, March 16, 2008; “Tragjedia e Gërdecit: Arrestohen drejtori i MEICO dhe pronari i firmës” [The Tragedy of Gërdec: Arrested the Director of MEICO and the Owner of the Company]. *24 Orë*, March 17, 2008.

<sup>19</sup> Adi Shkëmbi, “OSBE dhe KE: Dakort me ndryshimet Kushtetuese [OSCE and EC: We Agree with the Constitutional Amendments], *Panorama* (April 23, 2008).

<sup>20</sup> Ibid.

<sup>21</sup> For such references, for instance, see Roskin (2002) and Brown (2000).

<sup>22</sup> See “EU-Western Balkans Summit – Declaration.”

[http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/these\\_saloniki\\_summit\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/these_saloniki_summit_en.htm) [Accessed September 28, 2010]. As the Declaration states:

The EU reiterates its unequivocal support to the European perspective of the Western Balkan countries. The future of the Balkans is within the European Union. The ongoing enlargement and the signing of the Treaty of Athens in April 2003 inspire and encourage the countries of the Western Balkans to follow the same successful path. Preparation for integration into European structures and

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ultimate membership into the European Union, through adoption of European standards, is now the big challenge ahead. The Croatian application for EU membership is currently under examination by the Commission. The speed of movement ahead lies in the hands of the countries of the region.

For the Thessaloniki Agenda for the Western Balkans, go to [http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/thessaloniki\\_agenda\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm) [Accessed September 28, 2010].

<sup>23</sup> Interview with Mr. Arben Imami, by that time Albania's Prime Minister Chief of Staff.

<sup>24</sup> According to an anonymous source from the PD fraction in *Kuvend*.

<sup>25</sup> For the notion of constitutional nationalism and the case of Macedonia, see Robert M. Hayden. (1992: 655-6).

<sup>26</sup> Interview with Arbën Xhaferi, former Chairman of the Democratic Party of the Albanians and member of the Parliament of Macedonia.

<sup>27</sup> In the first draft I wrote that phrase in the form of "the Macedonian case." Later, after an interview with Arbën Xhaferi of the Democratic Party of the Albanians, I realize that such an expression would presume the patronage of the Slavic population on the case. Thus, I thought it more appropriate to avoid that grammatical form unless I have to refer explicitly to other author's usage of the "Slavo-Macedonian" form. However, I had to learn the full lesson yet when I have been told by my Macedonian friend that the expression Slavo-Macedonian is insulting to them, and the expression Macedonian is the only appropriate way to address them. It was summer 2009, the time when the openly-declared Slavic origin of the Macedonians (a position defended mainly by the political left) was under attacks and the right-wing version of the ancient Macedonian ascendancy of the contemporary Macedonians was progressing slowly but surely, in a typical Balkan mythological way. Politics involved too, since the Macedonians needed to confront Greece who had blocked the country's NATO membership that April in a contention over the mane of the country.

<sup>28</sup> During my efforts to empirically trace the constitutional reform in Macedonia, and, consequentially, the local decentralization reform, I refer in several instances to data and their interpretation from Daskalovski's book *Walking on the Edge: Consolidating Multiethnic Macedonia 1989-2004*. Language's lack of clarity notwithstanding, Daskalovski's book is a valuable resource of data and a look on the conflict from within, indeed, too much from within. Even though Daskalovski tries to take a more balanced position, for him, ethnic inequalities in Macedonia were only "perceived." In a section that spans from page 114 to page 130, Daskalovski wonders about the "paradox" that, while EU, NATO and US diplomats and politicians were harshly criticizing UÇK, they were asking the Macedonian government to show proportionality in its response to the crisis, and were also urging constitutional changes in the country. He overemphasizes the security concerns over international involvement in Macedonia, but is not able to see that those security concerns were threatening the very existence of Macedonia. In tune with the Macedonian mood, Daskalovski misses no chance to point to security threats coming to his country from Kosovo, hence echoing Macedonian official position that, while it was nothing wrong with the Constitution of 1991 and the nation-state, the Macedonian conflict was imported from Kosovo. In spite of immense evidence that Daskalovski himself offers, and that clearly show that the only reason why Macedonia today still exists is the international intervention to prevent its dissolution by brokering an agreement, Daskalovski seems inclined to share the Macedonian official view and the ubiquitous conviction that, as Mr. Xhaferi has pointed out in an interview with the author, what happened was "an international conspiracy where Albanians were only an instrument." As Mr. Xhaferi comments the constitutional amendments spurn from the Ohrid Agreement

There are attempts in Macedonia to offer Albanians unemployable rights. The Constitution and laws provide unrestricted laws, but only verbally. It was built so as to create psychological leverage during the implementation process as well as during the negotiations, with the Macedonian part lacking negotiation will. This sort of perpetual intransigence negatively influenced the agreement as well as demonstrated the lack of willingness to implement it. As such, this Agreement incarnated the end of war by correcting some Articles that justified inequality, namely the ethnocentric concept of state built on a multiethnic social environment. Hence, when the consensus for the concept of state to represent the multiethnic reality of Macedonia was achieved, that reflection was not an optimal one due to the conviction of Macedonian negotiators that the war an international conspiracy where Albanians were only an instrument. The obstructions to the implementation of the Agreement come only from Macedonians. Now (2009) after eight years, not only the topics of the Agreement

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concerning the representation of diversities in the concept of state are not implemented, but such agreements have been annulated or modified, i. e., the official application of the Albanian language, the adequate representation, decentralization, territorial organization, the official application of the flag, the agreement for the status of former warriors in the conflict of 2001, the amnesty for all the participant in that conflict, except for cases that would eventually be proceeded by the Hague Tribunal as well as meeting the deadline for the implementation of the Ohrid Agreement, that is, year 2004 (translated from Albanian by R. P).

Moreover, following Daskalovski's course of the conflict, one reads only for government's military success; then, all of the sudden, the rebels take Aračinovo and, practically, began the siege of the capital. Daskalovski justifies government's moderate use of force with international pleas for restrain. However, UÇK leaders have told me that the Macedonian government spared no military resources to achieve an impossible victory. On the contrary, UÇK fighters stated that they were constrained in use of violence since much of the combat unraveled in Albanian heavy populated territories. As my source went on, the reason for this nature of our struggle was that we wanted to liberate our territories from Macedonians, not occupy their territories.

<sup>29</sup> As Lebamoff and Ilievski (2008: 8) point out

[t]here is evidence that newly independent Republic of Macedonia was constructed in a manner that protects Macedonian ethno-national identity. While ethnic Albanians have kin states of Albania and Kosovo, the Republic of Macedonia is considered as critical to the protection and nurturance of the Macedonian ethno-nation by ethnic Macedonians. Yet Albanian Macedonians were fearful of repression and second-class citizen status if the new state remained defined in Macedonian ethno-nationalist terms, particularly since they were (at Macedonian independence in 1991, and today) underrepresented in public employment, higher education, the sciences, the military and law enforcement, and white-collar professions.

<sup>30</sup> Lebamoff and Ilievski (2008: 37); see also Daskalovski (2006)

<sup>31</sup> *Borba*, October 17, 1990, p. 4, cited from Hayden (1992).

<sup>32</sup> Hayden (1992), p. 659.

<sup>33</sup> Interview with Arbën Xhaferi.

<sup>34</sup> Lebamoff and Ilievski (2008: 15) cite the former Deputy Prime Minister Vasil Tupurkovski recounting in an interview, "Macedonian political elites did not accept the idea of reaching an 'historical agreement with our ethnic Albanians.'"

<sup>35</sup> Cited from Lebamoff and Ilievski (2008: 13). In a conversation with the Deputy Chairman of Sobranie and Chairman of PDP Abdurraman Aliti in 1995, he offered a very similar explanation for the reason of the Albanians' participation in the Macedonian political system. He added the Albanian fear that an unstable Macedonia would have been an attractive lure for the militaristic Serbia; and also emphasized his confidence that participating in the system would be better to improve the position of the Albanians in the Macedonian society. The events to come proved him right.

<sup>36</sup> Opinion No. 6 of the Arbitration Commission of the Peace Conference on Yugoslavia (1992) 31 ILM 1507

<sup>37</sup> "Me punue brenda sistemit" [working within the system] was the literally nomination of the Albanian politics in Macedonia during the 1990s.

<sup>38</sup> According to Marko (2004), the number of Albanian judges increased from 1.7% of the total judges in 1991 to 8.7% in 1996; the number of Albanian Macedonian students increased from the share of 6.4% that they had at the University of Prishtina in 1991, to 15.7% in the Macedonian universities in the academic year 1997-1998. In an interview with the Albanian Deputy Minister of Education of Macedonia Hasan Jashari in summer 1995, he revealed that the number of the Albanian high schools have increased from five to nineteen (Sejdiaj 1998: 214).

<sup>39</sup> Cited from Daskalovski (2006: 73).

<sup>40</sup> Albanians boycotted the Referendum for Independence held on September 8, 1991, as well as the population censuses of 1992 and 1994.

<sup>41</sup> For instance, on March 31, 1992, up to 40,000 Albanians demonstrated in the Macedonian capital Skopje, asking the international community not to recognize Macedonia as an independent country "until the state grants Macedonian Albanians the right to autonomy in regions and villages where ethnic Albanians make up the majority"

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(Daskalovski 2006: 68); moreover, at a December 1992 press conference, one of the leaders of the PPD-NDP alliance Muhamed Halili warned that, if Macedonian elites do not change policy, the Albanians will seek to achieve their ends “through acts of civil disobedience (cf. Daskalovski 2006: 69); as for the Albanian project of political autonomy, I have already mentioned their symbolic act of declaration of independence in an unrecognized referendum in January 1992, as well as the formal act of the declaration of the Albanian Autonomous Republic of Ilirida in the Southwestern Macedonian city of Struga, April 1992.

<sup>42</sup> When, during my conversations with Mr. Abdurraman Aliti in the period 1994-1996, he was listing to me the long list of Albanian complains, I was asking him whether or not they had a chance to explain this situation to the Macedonian elites and foreign officials, he used to assert: “many times.” The same answer of the same question has been given to me during my current exchange and interview with Mr. Arbën Xhaferri.

<sup>43</sup> The “weapons affair” is one of the murkiest spots in Macedonia’s recent history, and a deep scar in the interethnic relations in the post-Yugoslav Macedonia. In late September 1993, nine Albanians, including the then Macedonia’s Vice-Minister of Defense Hysen Haskaj and Vice Minister of Health Imer Imeri, both from PPD, were arrested; in January of the next year, the Secretary General of PPD Mitat Emmini was added to the list of arrests, all of them charged with conspiracy to organize armed gangs. The passionate involvement of the Albanian government in accusing Mr. Emmini as a betrayer of the Albanian cause, and its officials’ involvement in restructuring, and consequentially splitting PPD, continues to remain a mystery for those who were attentively following the Macedonian developments in the early 1990s. A trial was staged against them in 1994, and a Macedonian dominated Court found all of them guilty, and sentenced them with jail time ranging from five to eight years. In an interview with Mr. Emmini several years after he served one year jail time, Fiqiri Sejdiaj cites Mr. Emmini to maintain that the so called armed gangs were in fact self-organized Albanian villagers in the border of Macedonia with the then Serbian occupied Kosova who were trying to defend themselves against incursions of Arkan-led and Sheshel-led Serbian paramilitaries who were in the business of terrorizing and looting Albanian villages throughout Kosova and, apparently, Northwest Macedonia as well (Sejdiaj 1998: 91-108).

Moreover, reportedly, in June 1992, the Macedonian police discovered in the Albanian inhabited village of Radolishta on the Ohrid Lake, near the border with Albania, “a cache full with illegal weapons, explosives, ammunitions, and paramilitary uniforms” (Daskalovski 2006: 68).

On July 22, 1998, three bombs exploded in three different Macedonian cities: Skopje, Kumanovo, and Priljep. Kosovo Liberation Army claimed responsibility for all the three explosions which caused only material damages (Daskalovski 2006: 74).

<sup>44</sup> Sometimes, authors refer to the mysterious term “foreign mercenaries” as members of UÇK; yet, during my frequent contacts with political and military leaders of both KLA and UÇK, they have credibly dismissed any involvement of foreign fighters in the Albanian insurgency in both Kosovo and Macedonia.

<sup>45</sup> There is a widespread tendency to consider the Macedonian crisis as a spillover of the Kosovo war (Lebamoff and Ilievski 2008; Ilievski 2007; Ragaru 2007; Daskalovski 2006; Micheva 2005; Brunnbauer 2002; ESI 2002; Schneckener 2002) along with the recognition that the way it was built, the Macedonian stability could not last long. However, the emphasis on what Mincheva (2005) calls “the emergence of a transborder non-state actor” (ETMS) as a causal factor of the Macedonian conflict might be misleading. As the historical analysis in this Chapter shows, the Albanian ETMS is more an effect than a cause of the conflict; the long list of complains among the Albanians in Macedonia over at least a decade of the Macedonian independence and the reluctance of the Macedonians to recognize them as a constitutive part of the country bred frustrations that occasionally burst in demonstrations and open public defiance to the Macedonian dominated government. ETMS might not be a “useful unit of analysis,” as Mincheva claims, if it tries to shift too much of a causality on the external factors.

<sup>46</sup> These messages ranged from “we don’t want to endanger Macedonia’s stability and integrity, but we will fight a guerrilla war until we have won our basic rights, until we are accepted as equal people in Macedonia” to statements asserting that UÇK was fighting for an “independent, separate Albanian state of Western Macedonia” (Ilievski 2007: 7).

<sup>47</sup> *Time Magazine* (October or November 2002).

<sup>48</sup> Timothy Garton Ash considers the Albanian guerrilla in Macedonia as an “astonishingly successful seven-month campaign.” See Ash, Timothy Garton. “Is There a Good Terrorist?” *The New York Review of Books* November 29, 2001. At <http://www.nybooks.com/articles/archives/2001/nov/29/is-there-a-good-terrorist> . [Accessed November 13, 2010].

<sup>49</sup> By early June 2001, UÇK took control of the Albanian inhabited village of Aračino that overview the country’s capital Skopje. While the move did not represent any major military success since the village lacked any presence of security forces, it represented a major psychological and public relation success for UÇK: in matter of months, its

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units managed to reach the gates of the capital, and also put some of the country's main industries within the range of their mortars. Government's military efforts to recapture the village failed after meeting fierce resistance. On June 11, an EU and US brokered ceasefire was announced, but violated on June 22 as government troops pushed to gain the village. Their unsuccessful military operation ended again as the Chief of EU Common Foreign and Security Policy Javier Solana brokered another ceasefire. On June 25, the US personnel of the KFOR observed the withdrawal of Albanian fighters from Arachino. When several months later I asked one of the political leaders of UÇK about the reasons of their withdrawal from Arachino, he told me that in no way the Albanian fighters would oppose US demands. Denying any leverage of Solana brokerage, he told me: "Some high ranking US militaries came to us and asked us to leave the village because our presence was interfering with their mission in Kosovo. Although Arachino is besides the highway that connects Skopje with Prishtina, we could not understand how our presence in Arachino was interfering with NATO operations in Kosovo, but we did not want even remotely of being accused as disturbing NATO after all the help that they have given to Albanians of Kosovo."

<sup>50</sup> See "Executive Order 13219 of June 26, 2001, Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans." At [http://en.wikisource.org/wiki/Executive\\_Order\\_13219](http://en.wikisource.org/wiki/Executive_Order_13219). [Accessed November 13, 2010].

<sup>51</sup> Timothy Garton Ash. "Is There a Good Terrorist?"

<sup>52</sup> "Presidency Conclusions of the Stockholm European Council, 23-24 March 2001." At [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/00100-r1.%20ann-r1.en1.html](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00100-r1.%20ann-r1.en1.html). [Accessed November 13, 2010].

<sup>53</sup> My emphasis.

<sup>54</sup> In the period between November 2005 and December 2009, the Mission of the European Union acted as a single representation of the European Commission and the Council of Ministers of the European Union stemming from the double function of Ambassador Erwan Fouéré—being both European Union Special Representative and Head of the Delegation of the European Commission. With the implementation of the Lisbon Treaty on December 1, 2009, the EU was represented in Macedonia by the Delegation of the European Union, as foreseen by the Treaty of Lisbon. The EU High Representatives ever since the establishment of the Office have been as follows: Alain le Roy (October 29, 2001-October 30, 2002), Alexis Brouhns (November 1, 2002-January 31, 2004), Søren Jessen-Petersen (February 1, 2004-August 31, 2004), Michael Sahlin (September 1, 2004-October 30, 2005) and Erwan Fouéré (November 1, 2005-...) acted in turn as EU representatives. E. Fouéré was appointed both head of the Delegation of the European Commission and EUSR, following the fusion of the former Office for the implementation of the Ohrid Agreement with the EC Delegation (Ragaru 2007: note 12).

<sup>55</sup> As (Ragaru 2007: 10) reveal

Amnesty for the former insurgents<sup>13</sup> and refugee returns were amongst the issues that provoked heated controversies in the months following the end of the infighting. Despite President Boris Trajkovski's (VMRO-DPMNE) firm commitment to the Ohrid process, political tensions remained high until the September 2002 parliamentary elections that saw the victory of the (more moderate) Social-Democratic Alliance (SDSM) and the formation of a coalition in which the Albanians were represented by the Union for Democratic Integration (DUI), an Albanian party initiated in June 2002 by former NLA chief, Ali Ahmeti. With some of Macedonia's most flamboyant nationalists out of office - former Interior minister, Ljube Boškovski, former Prime Minister, Ljubčo Georgievski -, [sic] the implementation of the Ohrid Accords [sic] went smoother.....at least until decentralization and redistricting were put on the agenda in 2003-2004.

<sup>56</sup> Donald G. McNeil Jr., "NATO Conditionally Approves Troops for Macedonia." *New York Times*, August 22, 2001.

<sup>57</sup> George W. Bush (2003). "Statement on the Situation in Macedonia," March 23. <http://www.presidency.ucsb.edu/ws/index.php?pid=45952> [Accessed October 1, 2009].

<sup>58</sup> Timothy Garton Ash. "Is There a Good Terrorist?"

<sup>59</sup> The International Crisis Group (2003). "Macedonia: No Room for Complacency." Europe Report N°149, October 23.

<sup>60</sup> I have found corroborations of this argument among Macedonian and Albanian students from the Sts. Cyril and Methodius University in Skopje and the Southeast European University in Tetovo during my field research for various projects in summer 2009 summer 2010.

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<sup>61</sup> The drafted Preamble read:

The citizens of the Republic of Macedonia, taking over responsibility for the present and future of their fatherland, aware and grateful to their predecessors for the sacrifice and dedication in their endeavors and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal rights and obligations towards the common good—the Republic of Macedonia, [...] have decided to establish the Republic of Macedonia [...] (Ilievski 2007: 21).

<sup>62</sup> Council of Europe: <http://www.coe.int/NewsSearch/Default.asp?p=nwz&id=550&lmLangeue=1> [Accessed October 11, 2009].

<sup>63</sup> The draft-Article 19 reads:

1. The freedom of religious confession is guaranteed.
2. The right to express one's faith freely and publicly, individually or with others is guaranteed.
3. The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, The Catholic Church, and other religious communities and groups are separate from the state and equal before the law.
4. The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of procedure regulated by law (Daskalovski 2006: 164).

<sup>64</sup> According to data from the UNDP-Kapital Center for Development Research (2003) survey, the percentage of politicians having "much confidence" or being "somewhat confident" in their party relative to those having "no confidence at all" or being "somewhat not confident" are for SDSM 51% to 45%, BDI 21% to 74%, VMRO-DPMNE 18% to 78% and PDSH 16% to 80% respectively.

Moreover, the life of Albanians in Macedonia was not considered unbearable by all Albanians. In a report for *The Independent*, Justin Huggler referred to an Albanian who did not support the Albanian armed rebellion as follows: "'Things were getting better. There has been an improvement in our rights over the past year.' But, after the events in Tearce, he claims there were heavy-handed police raids in Albanian areas, and opinion began to harden." Meanwhile, an Albanian who supported the armed rebellion said: "It's not one big thing that's influencing the people. It's a long story of little things building up that makes them sympathetic to the men in the hill." As the report follows, "It's that we're not allowed to have our names in Albanian in our passports. It's that we feel discrimination against us everywhere." See Justin Huggler, "My Father Was a Fighter. It is in Albanian Blood. I Am Not Afraid. We Will Fight." *The Independent* (Monday, March 19, 2001) <http://www.independent.co.uk/news/world/europe/my-father-was-a-fighter-it-is-in-albanian-blood-i-am-not-afraid-we-will-fight-687996.html> [Accessed September 28, 2010].

As the UN special envoy to the Balkans Carl Bilt has noted,

In terms of human rights, as in the economy, Macedonia is a star by Balkans standards. It is nonsense to compare the Albanians' situation here with Kosovo. They have an Albanian party in the coalition government. Western Macedonia is de facto run by Albanians.

Following this comment, Bilt considered the conflict as "an internal Albanian dispute" adding that "[t]he people in the hills' argument is with Xhaferi, not the Macedonians." See Huggler, "My Father Was a Fighter. It is in Albanian Blood. I Am Not Afraid. We Will Fight."

<sup>65</sup> Interpreting it from a constitutional perspective, Marko (2004: 9.) notes that

This new formula reintroduces the mix of the nation-state and state-nation concepts, but in a quite different way than in 1991 or even under the communist constitution of 1974. In contrast even to the constitution of 1974, Macedonia is no longer called the nation-state of the Macedonian people and others (nationalities). Instead, both citizens and ethnic groups, all of them called peoples, are declared 'constituent' forces in the process of state formation. Hence, the inequality between the bearers of rights of the Macedonian nation and citizens of other groups under the constitution of 1991 has now been balanced on two levels. First, all members of all the peoples are (equal) citizens, and,

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secondly, all ethnic groups including the majority population are recognized as (equal) communities by designating them peoples. Nevertheless, the preamble has returned to the concept of group equality without, however, giving the nation-state concept priority. In comparison to the constitutions of other ex-Yugoslav republics such as Slovenia, Croatia, Serbia and Bosnia-Herzegovina, which all give preference to the respective majority nation(s), this new mix in the preamble of the Macedonian Constitution can indeed be called the formula for a 'multiethnic' state and society requiring the development of multiple identities. With this new formula the term "Macedonia" is no longer exclusively connected to Slav Macedonians and hence allows for the development of a feeling of belonging to this state and its society for the other ethnic communities too. This will also facilitate the chance to overcome the exclusive ethnonational identities which dominate in particular among members of the Albanian Macedonian community ('auto-ghettoization') and to develop the required multiple identity both with the ethnic community and the state.

<sup>66</sup> Timothy Garton Ash. "Is There a Good Terrorist?"

<sup>67</sup> However, in particular Turks are put under pressure to assimilate into the Albanian Macedonian community where the Albanian Macedonian are in the majority. See International Crisis Group (ICG)(ed.), "Macedonia: No Room For Complacency", ICG Europe Report no. 149, October 2003, 23, at [http://www.crisisgroup.org/library/documents/europe/49\\_macedonia\\_no\\_room\\_for\\_complacency.pdf](http://www.crisisgroup.org/library/documents/europe/49_macedonia_no_room_for_complacency.pdf) [Accessed October 3, 2010]; (cf. Marko 2004/5: note 53).

<sup>68</sup> Taleski, Misko (2010). "Macedonia's Thorny Path to the EU." SETimes.com, [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2010/09/16/feature-02](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2010/09/16/feature-02) [Accessed October 5, 2010].

<sup>69</sup> According to interviews with Abdurraman Aliti and Arbën Xhaferi.

<sup>70</sup> An rational interpretation of "sticks and carrots" would help to see leaders' preferences adjusted accordingly.



## CHAPTER V

### LOCAL DECENTRALIZATION REFORM

The different mechanisms employed by the EU to transmit consociational practices to countries undergoing democratization can be better understood through a comparison of local decentralization reforms in Albania and Macedonia. In a unified society such as Albania, the involvement of the EU in that sectorial reform was minor. However, two other regional organizations, the CoE and OSCE stepped in to assist the Albanian government with the technicalities of reform. As for Macedonia, local decentralization reform represented the core of the Ohrid Agreement and was one of the most important consociational practices designed to maintain social cohesion. However, although the country conducted groundbreaking decentralization reform due to the implementation of the Agreement, it still lags far behind Albania. While both countries started with different local government systems, between 1992 and 2002 these systems became remarkably similar. Since that time, they have moved at different rates.

An historical analysis of the reform process reveals that some of the problems related to fiscal decentralization continue to linger in Macedonia as well as Albania. This chapter shows that, while Albania follows a typical Eastern European path toward local decentralization, the case of Macedonian decentralization reform involves more complex dynamics since policy choices and implementation reflect the peculiar Macedonian social context, that is, the seemingly impossible task of decentralizing local government while consolidating a unitary nation-state out of a society deeply divided along ethnic lines.

While the motivations of political actors involved the Albanian and Macedonian decentralization are different and producing distinct policy outcomes, it is necessary to outline some similarities that will add context. The most important similarity between the Albanian and Macedonian decentralization reforms—one which they share with other EECs—is the debate between deconcentration and decentralization policies. Referring to Illner (1998; 1997), deconcentration is understood as a process whereby government functions are shifted downward within the hierarchical system of state bureaucracy, without weakening the vertical hierarchy of the system; deconcentration units remain

vertically subordinated to central authorities. According to the same authors, decentralization means the devolution of functions of the state to autonomous territorial governments that can act without consultation with central governments. Decentralization can be interpreted based on two competing philosophies of state: a communitarian, conservative approach would see local government as deriving from a central authority and enjoying as much autonomy as granted by the central government; and the individualist, liberal tradition that views local government as primary and the central government as its derivative simply to resolve the dilemmas of collective action among local communities (Illner 1998: 9).

Difficulties with EE decentralization reforms consist of the incompatibility between the Eastern European communitarian view of the state and their aspiration to implement Western European, individualist models of governance. According to the liberal model, local government promotes citizen participation in governance; is more responsive to their concerns and more able to find acceptable solutions to their problems; offers a counterweight to an authoritarian state (Illner 1998: 9; Baldersheim et al 1996: 4); and is most effective in delivering services to meet local needs (Illner 1998: 9; Goldsmith 1992). As for functions that might fall outside of a strict individualist approach or reflect a communitarian culture of governance, decentralization provides opportunities for the development of a new elite (Illner 1998: 9; Baldersheim et al. 1996: 4), creates a sense of place or community (Illner 1998: 9; Goldsmith 1992), and is an element of “civil society” or a bridge linking civil society to the central state (Illner 1998: 9). A communitarian approach, thus, would consider local decentralization as a gift that central government offers to local communities at its own expense. Arguably,

Political actors perceive the reform of regional-level administration as more relevant to the distribution of political power than was the local reform, and it became, therefore, intensely disputed—conflicts have led eventually to a political stalemate that blocked further progress (Illner 1998: 25).

Further elaborated, such a reluctance of the central government to relinquish its grip on local issues satisfies several needs: the need to maintain control of economic and

political development during the still volatile postsocialist transformation; the need to control the distribution of scarce resources during transition periods of recession or crisis; the need to control, and possibly level social differences among territorial units in order to prevent the marginalization of some regions and the resulting social and political tensions that would endanger social cohesion and stability; and the need to formulate policies aimed at maintaining national integration in a general atmosphere of societal fragmentation, resulting from structural reforms (Illner 1998: 26; Elander 1995).

As Illner (1998: 10) points out, three sets of socio-political contextual factors influence territorial reforms: (1) the political, administrative, and psychological legacies of the communist era; (2) the prevailing expectations toward decentralization; and (3) the political context of the reforms. As we have already discussed in Chapter 2, Illner's first and third factors are also elements of my argument, while Illner's second factor can be easily merged with either. Thus, while euphoric expectations concerning democratization prevailed in the early postsocialist EE, Illner (Ibid.) also points to "a popular distrust of institutions, of any political representation, and of formal procedures; as well as unwillingness of citizens to get involved in public matters and to hold public office." The source of such feelings can easily be traced to the political experiences during communism of citizens in general and the local government in particular.<sup>1</sup> They are also embedded in the political context of reforms since the latter can affect people's expectations of distinct reforms.<sup>2</sup>

The political, administrative, and psychological legacies of the communist era include low expectations of local government and a general view that it is merely an extension of the central government (Bird, Ebel, and Wallich 1996). Under the principles of "democratic centralism" and "homogenous state authority," both secured under communist party hegemony, local officials were simply party officials who merely implemented local administrative functions of minor political and economic relevance. Some authors (Illner 1998, 1993; Coulson 1995; Elander 1995) have pointed to the differences between the official ideological model of territorial government in communist regimes and its practical application, highlighting the leverage wielded by major state-run economic enterprises. The enormous financial resources and employment capacities of these enterprises often made them the effective power center in the territories where they

exercised their activity, hence mounting another challenge to the local government besides the communist party's ideological centralism (Illner 1992). Moreover, referring mainly to the most developed and, ostensibly, liberal communist regimes of Eastern Europe, some authors claim that local governance was far from static since reform attempts had been undertaken in some of these countries as early as 1961 in Czechoslovakia, 1973-1975 in Poland, and 1984 in Hungary. These reforms contributed to the centralization of the territorial structure of public administration (Illner 1998: 13). Other attempts to introduce modest elements of decentralization and democratization touched the fundamentals of the system. Efforts to reform the atrophied local governance in these countries were under way by the late 1980s when the collapse of communist regimes brought to an end the old local government system and cleared the path for local decentralization reforms. However, one should keep in mind that decentralization efforts during communist regimes were not equally spread throughout the region.

The legacies of communism in Albania and Macedonia present similarities and differences both in quantity and quality. Albania's local government was a typical Stalinist one: an elected assembly, called *Këshilli Popullor* [People Council]; an executive committee elected by *Këshilli* called *Komiteti Ekzekutiv* [Executive Committee]; a council chairman for lower tiers called *Kryetari i Këshillit* [Chairman of the Council]; and a council chairman for higher tiers called *Kryetari i Komitetit Ekzekutiv* [Chairman of the Executive Committee]. Of course, *Partia e Punës* (PP) [Labor's Party, the Albanian communist party] had its own officials in all of these territorial structures, but hardly anyone saw local government as being anything different than a party extension in local administrative affairs. Thus, whether it was *Sekretari i Partisë* [Party Secretary] or *Kryetari i Këshillit/Kryetari i Komitetit*, the person who ran local affairs, the authority often rested with the personality of that particular official rather than written codes. As for Macedonia, the Yugoslav Constitution of 1974 practically turned that country into a federation of municipalities where local taxes generated resources for each level of political administration: federal, republican, regional, and municipal. For instance, due to some special taxes, the municipality was able to pay salaries even for military personnel dislocated in its territory. Arguably, this was Tito's policy to affect the transformation of the Yugoslav republics into national-states.<sup>3</sup>

The poor Albanian economy and PP's vigilance any potential rival in exercising power left no room for economic enterprises to influence local government activity. In fact, in the Albanian predominantly agrarian economy, few enterprises were large enough to affect local policies. Yet, in the Yugoslav Macedonia where economic enterprises were the direct fiscal source for local units—and through them, of the entire administrative hierarchy—the intermingling of the economic sector and local administration was more obvious and effective. This explains why Albanians in Albania and those in Macedonia initially had different expectations from their local governments. In Albania, the voices in favor of local decentralization had been relatively weak until October 2000 when Edi Rama from *Partia Socialiste* (PS) [Socialist Party] became the first socialist mayor of the capital city of Tirana since the introduction of pluralism. He vigorously opened up the debate over local decentralization. In contrast, Macedonian authorities hoped that substantial local autonomy would serve Albanian demands for federalism.

As for pre-communist legacies, my interviews with politicians from Albania and Macedonia revealed that hardly any of them had any recollections of pre-WWII local administration systems. During this era, Albanian society was organized into communes where it was difficult to find any literate person, and officials were appointed from the *Ministria e Brendëshme* (MB) [Ministry of Interior]. The situation was similar in Macedonia. Yet, since the Macedonian territory was considered simply as the southern region of Serbia, communal officials were imported from Serbia whose main goal was to promote Serbian consciousness and nationalism. Since in both countries two to three generations were born after the pre-communist period, hardly anyone was able to assess whether such a system was able to work.

As for the political-context-of-reform factor, a deeper elaboration is needed. Arguing that political considerations prevailed over principles such as efficiency, representation, and promotion of local values, Illner (1998: 17) points out:

Expediency was an important factor in the implementation of the reforms: the need to build a new system of territorial administration in the postcommunist countries of Central and Eastern Europe was viewed as a political task that could not be postponed—a delay would have had a negative

impact on economic and political components of the transformation.

True, this was the case of the initial reforms in most of Eastern Europe, however, the momentum of territorial reform was lost with the exhaustion of most of the post-revolutionary enthusiasm. By 1998, time was no longer on the side of decentralization. The local government system produced in Albania by the Law on the Organization and Functioning of the Local Government and the Law on the Elections of Local Government, July 1992 established local government which, being structurally different from those of the communist era, provided little more services than the communist councils.

Moreover, to make things worse, destitute as it was, the country entered into a difficult period of economic restructuring through a shock-therapy strategy that brought the entire economy to an immediate standstill. Land distribution even turned out to be counterproductive in face of an impoverished and demoralized peasantry who were more interested in migrating than cultivating the land. As for Macedonia, elites' interests in decentralization seem to be different than those of Eastern European countries with established sovereignty and statehood. Rather than taking advantage of the already decentralized local government, Macedonians centralized the governance as an assertion of sovereignty and nation-state building (Selami and Risteska 2009). Until 2005, the local government in Macedonia reflected the Macedonian concern that any kind of decentralization would nourish further demands by Albanians for autonomy, federalization and, ultimately, secession. Statehood issues and uncertainties that the new Macedonia faced in a hostile Balkan environment led to an emphasis on independence rather than democratization and government efficiency. The fervor for establishing the Macedonianess of the new country prevented any momentum for decentralization in the first place.

Thus, while local decentralization reforms should have taken into consideration principles of efficiency and good governance, the Eastern European decentralization reforms proved to serve symbolic politics. As a consequence, local government restructuring mirrored structural changes in Eastern European societies, but with little practical applicability. As Illner (1998: 17) argues, political concerns were of primary

importance while administrative and economic concerns were secondary. Thus, we can look for answers in the political context of the reforms. This context in Albania reflects the tug-of-war between central and local governments over competences to design and implement policies related to local issues. Such a tug-of-war is almost inexistent when the same party controls the central government and the most economically productive local units, but becomes acute when power is divided. For Macedonia, that tug-of-war was an intrinsic part of the ethnic clashes between the Macedonian dominated central government and the Albanian dominated local government in the western part of the country, a region with a large population and some of the wealthiest municipalities in the country.

### **The Politics of Local Decentralization in Albania: Denying Yourself What You Don't Want Your Rival to Have**

Albania inherited a Soviet style local government established only to implement centralized government policies and control the population, with no input in or access to the decision-making process (Rhodio and Van Cauwenberghe 2006: 1-2). Although during the first years of transition the focus was mainly on reforms related to building central institutions, a number of laws and by-laws defining the responsibilities of local governments were approved (Hoxha 2002: 6).

The first attempt to reform the local government was made on July 1992 with the Law on the Organization and Functioning of the Local Government and the Law on the Elections of Local Government. Both assigned considerable political autonomy to local authorities, some services in favor of local communities, and greater administrative and financial autonomy. These laws enshrined the principle of local self-governance as one of the basic goals and principles of local governance in Albania.<sup>4</sup> Yet the process was frozen when *Partia Demokratike* (PD) [Democratic Party], who held a parliamentary majority and controlled the government, lost ground to the PS in the local elections of July 26, 1992. Moreover, although the law asserted the autonomy of the local government, it did not provide the authority and necessary instruments for its exercise. A local authority controlled by the opposition that could develop policies, raise and use funds, and employ

people independently of the central government was against the concept of the strictly centralized governance carried out that time by the PD.

The PD's overwhelming victory in the local elections of October 1996 might have been a golden opportunity for the Albanian decentralization reform. However, the crumbling of the financial Ponzi schemes that flourished during the PD's rule, between 1992-1996, as well as skewed political representation in the legislature and local governments generated by the May 1996 rigged parliamentary elections stirred popular unrest, massive riots, and armed conflict throughout the nation.

The Socialist-Centrist coalition that emerged after the elections of June 1997 had to work with the PD controlled local government; therefore, there was no pressure for the central government to undertake decentralization reforms. Yet, the Council of Europe began to pressure the Albanian government to ratify the European Charter of Local Self Government (ECLSG) as an obligation of membership. The Albanian ratification of ECLSG in November 1999 was followed by incremental steps toward reforms related to financial decentralization undertaken during the same year. These reforms included the establishment of block-grants by the central government and the permission to select sectors of administrative expenditures; the transferring to the local government of revenues locally collected by property taxation as well as the responsibility of collecting and administering these tax proceeds; the lifting of public expenditure limits; and the permission to transfer into future years unexpended revenues of local budgets and block-grants.

In November 1998, a new constitution was passed first by the parliament and later by a referendum. Regarding local autonomy, Article 108 of the new constitution followed the 1994 version by also accepting the principle of local self-government. In December 2000, the government adopted the *Strategjinë Kombëtare për Decentralizim dhe Autonomi Vendore* [National Strategy for Decentralisation and Local Autonomy],<sup>5</sup> a document that defines a long term reform of the local government decentralization process. The document included a decentralization schedule, resources, and specified the role and involvement of key actors. The strategy was the guideline for decentralization reform and served as a reference document for reforms in other sectors that affected the decentralization process. From this point of view, the strategy could stimulate a wider



array of reforms involving decentralization of health and education policies, public works, police, and the fiscal system. The document anticipated a process that would take several years.<sup>6</sup> Moreover, in 2000, the parliament passed Law No. 8652 On the Organisation and Functioning of Local Government (hereinafter the 2000 Law) and a number of other laws that concluded the legislative process of establishing democratic local government in Albania (Rhodio and Van Cauwenberghe 2006: 2).

Thus, the December 1998-July 2000 period witnessed intensive political and legislative activity toward local government and decentralization reform.<sup>7</sup> This process was affected by the approaching October 2000 local elections and the expectations that the ruling PS-led government coalition would win these elections. Indeed, ever since socialists assumed power in the summer of 1997, they were able to restore public order in most regions of the country, maintain 6-8 percent annual growth rates, and reduce inflation to below 4 percent annually. These successes and the weak PD opposition strengthened the PS' confidence that they would achieve victory in the local elections. Amidst high expectations stemming from the mayoral candidacy of then Minister of Culture Edi Rama, the PS passed in *Kuvend* a special law that would govern the Tirana municipality. Indeed, during 1999-2000, the PS-led coalition was preparing a decentralization framework that would serve its members once they assumed office.

The legislative framework that underpinned the 1999-2000 decentralization reform helped the country to comply with nineteen ECLSG articles, eleven of which were core articles. Yet, since the 2000 Law was implemented in two phases, January 2001 and January 2002, it took two years before Albanian legislation became compatible with paragraph 9.3 of the ECLSG related to local finances. Moreover, some topics have only partially fulfilled the ECLSG's standards;<sup>8</sup> the Albanian legislation has yet to align with the ECLSG on issues related to the control of the central government over the local administration.<sup>9</sup>

Although the constitutional and legislative bases of Albanian local government conform to a great extent to the norms established by the Council of Europe and to best practices in Western Europe, the actual practices of local administration are beset with difficulties. A number of laws, passed before the constitutional guarantees of local autonomy and the 2000 Law, are not in harmony with the principles of local self-

government. Laws that have led to conflicts between central and local governments include the law establishing construction police, the law on urban planning which sets up national planning agencies, as well as urban planning agencies, and the law on prefectures.

As in other Eastern European countries, a deconcentration process occurred in Albania, paralleling thus the country's decentralization process. A number of ministries established their offices—called directories—in many of the prefectures. These offices were directly subordinate to the central government. In a duplication of efforts, municipalities created their own offices for the same public services. Regional councils, composed of municipality council delegates, also established departments that covered the same areas. And finally, prefects developed their own duplicative administrative units to cover public health, agriculture, and education. Such a proliferation demonstrates the competition over competences between the central government and local government. On the one hand, the central government distrusted local government administrative capabilities as well as their desire to continue controlling the allocation of resources; on the other, local government was being increasingly aware of its potential role in local administration. One explanation shared by both central and local governments was that power holders from all parties rewarded political supporters with public offices.

The key problem of Albanian decentralization was financial decentralization. Due to limited tax collection capabilities, most municipalities relied on national financial resources that, for example, between 1998 and 2000 covered 93-96 percent of their total revenues. These figures remained unchanged during 2001 because the newly elected local authorities could not implement the new Law on Organization and Functioning of the Local Government.<sup>10</sup> During this period, local governments were unable to anticipate the receipt of any federal grants since the central government had implemented only *ad hoc* procedures. The central government had steadily increased the ration of unconditioned grants compared to the conditioned ones. However, the looming 1/3 to 2/3 ratio in favor of conditioned grants demonstrated the continuing mistrust of the central government toward the administrative capabilities of local governments, as well as its inclination to control the orientation of government grants. The PS' efforts to decentralize local government peaked on the eve of the 2000 local elections, coming to a standstill in 2002

due to the fact that the PS dominated government sought to politically control the investments of local governments.

Financial decentralization was not the only reform that stalled; the transfer of utility companies from central government management to local administration as well as the reassignment of property evaluation and registration responsibilities from central to local governments were also suspended. The result was that many PS-controlled municipalities in southern Albania received as much as 15 times more government grants than some PD controlled municipalities in the northern part of the country. Upon taking office in August 2005, the PD government instituted a policy to balance that misdistribution by increasing the financial support to the northern municipalities and distributing unconditioned grants directly to local authorities. Thus, by narrowing the gap of 15 to 1 ratio to a 10 to 6 ratio, the PD has endeavored to satisfy its own constituents in Northern Albania.<sup>11</sup>

It is worth noting that the intensive legislative drafting process for the local decentralization reforms of December 1998-July 2000 occurred during a period when the parliamentary majority belonged to a socialist-centrist coalition led by the PS, while local power in the majority of municipalities belonged to the opposition PD. On the other hand, although financial decentralization progressed during 2000-2002 when both the central government and most local municipalities were controlled by the Socialist Party, the reform did not meet ECLSG standards. Sources within the Albanian government during this period have revealed to me that the slow pace of decentralization resulted from the power struggle within the ruling PS between the Prime Minister Ilir Meta and PS Chairman Fatos Nano. In that struggle, the prime minister was able to reward mayors for their support and punish those who backed Mr. Nano.<sup>12</sup> Decentralization reform therefore practically came to a standstill in last three years of PS government rule, 2002-2005.

Upon reclaiming power in 2005, the PD undertook efforts to increase the disbursement of unconditioned grants for civil work projects and pledged to transfer water utility management to local administrations. The PD undertook these actions to show that now it favored decentralization, thus enhancing its prospects for winning the upcoming fall 2006 local elections. But, such a pro-decentralization stance may also have been taken because it was in the rational interest of the party to unburden itself of the

cumbersome and costly task of managing local utilities and services. As the Albanian Prime Minister Sali Berisha reiterated in the Conference for the Donors' Activity Coordination in Decentralization and Local Government held in Tirana on May 2006, the retention of centralized health and education services "would bring only the relentless decrease of the service quality, of teaching and health care."<sup>13</sup> In that conference, Mr. Berisha laid out his government's plan for decentralization: the transfer of the water utility service to local government, the expansion of local fiscal autonomy, the increase of government grants, the transfer of state owned properties, and the transfer of health and education services to local authorities.<sup>14</sup>

However, four years after that pledge, state owned and centrally controlled companies continue to run water and sewer utilities, and local officials from the opposition PS are still forcefully demanding their transfer to local governments, as stated by law.<sup>15</sup> The 2009 Freedom House's Report on Nations in Transit Rankings and Average Score notes that decentralization remains one of the main challenges facing local government in Albania. The Report goes on to note that the National Decentralization Strategy aims at completing the institutional framework for the transfer of responsibilities for local taxes, water pipes, and sewers to municipalities as well as loans to local government in order to facilitate the capital investments necessary for better services. Local authorities have opposed the way the government plans to transfer the water and sewers enterprises to local government since it includes only the transfer of bonds but not the management of the companies who run these services. These companies are projected to remain under the authority of the central government.<sup>16</sup>

In 2006, management of the small-business tax was fully transferred to local government, and in one year, collections increased significantly. This achievement was reversed a little more than a year later when, on January 1, 2008, the government cut the fiscal burden of this tax in half, causing an immediate drop in the amount of taxes that local governments could collect. One interpretation of this setback might be that the government's policy of delegating collection of national-level taxes to local government was not coordinated and there was no increase in capacities for achieving better fiscal administration at the local level.<sup>17</sup>

However, decentralization reform since the PD's victory in the June 2005 general elections has been plagued by political conflict between the PD, whose chairman is Albania's prime minister, and the PS, whose chairman is the mayor of Tirana. Thus, the PD's enthusiastic electoral promise in 2005 to reverse the ratio of conditioned versus unconditioned grants to favor the latter began to be implemented more slowly than was expected. The PD's feared that the major beneficiary of such a policy would be the PS controlled municipality of Tirana. However, the PD-PS conflict peaked in spring 2006 as the construction police, part of the executive branch, halted the construction of a traffic bypass that had begun in 2005 financed by the municipality. The country's central institutions – including the Tirana District Court who ruled in favor of the construction police – were divided in that debate. Thus, *Këshilli i Rregullimit të Territorit* [Territorial Adjustment Council] claimed that serious infringements of urban planning rules had occurred during construction of the flyover (Rhodio and Van Cauwenberghe 2006: 8). Meanwhile, the ombudsman and the high state audit ruled that no consistent irregularities had been noted in municipality projects regarding public works. Giovanni Di Stasi, the then President of the Congress of Local and Regional Authorities (CLRA), criticized the central authorities during a visit to Albania in January 2006 and stated that “the powers of the construction police and the composition and functioning of the Territorial Adjustment Councils do not conform to the provisions of the European Charter of Local Self-Government, and this creates a lot of misunderstanding and confusion.”<sup>18</sup> On July 2006 the Zogu i Zi bypass was completely demolished by the Construction Police.

On February 18, 2007, PS' Chairman Edi Rama was re-elected Mayor of the capital city and the PS also gained control of other important municipalities in the country. Perhaps because the electoral fervor was soon forgotten or the government was focused on other political priorities (i. e., the construction of Tirana-Morina highway), the political climate following local elections shifted to cooperation. Jurisdiction over the inspectorate of the construction police, whose office is responsible for verifying that projects go through proper licensing procedures, was transferred to local governments. In addition, during that year, legal and institutional measures were taken to transfer responsibilities related to the value added tax, local taxation, water supply, and sanitation from the central government to municipalities.<sup>19</sup>

However, such a détente came to an end with the approach of the summer 2009 parliamentary elections. In April 2009, the *Kuvend* established an investigative commission to look into building permissions issued by the Municipality of Tirana. No parliamentarian from the opposition agreed to sit on the commission, and it continued to work only with parliamentarians from the ruling coalition. Also, during the same spring, the *Kuvend* approved a proposal to reduce local governments' fiscal share of small business taxes from 30 percent to 10 percent. These changes in the fiscal system of the country also limited local government ability to impose tariffs on trade and services, thereby reducing local income from tariffs by 90 percent. The central government has not yet undertaken measures to compensate local government budgets for these losses.<sup>20</sup>

Later that year, on November 15, local representatives initiated a round of protests regarding the subject of financial autonomy, accusing the government of cutting local budgets as a way to balance the impact of the global economic crisis on the state budget. They asked for concrete actions, warning that they would otherwise use all democratic forms of protest to force the government to find an appropriate solution. In addition, local and central governments continued to clash over the transfer of water supply and sewage systems as evidenced by related judicial proceeding initiated by the municipalities of Tirana and Himara against the central government in 2008. In February 2009, the Constitutional Court declared unconstitutional an attempt by the central government to take over responsibilities from local authorities on issues involving administration of the territory.<sup>21</sup>

In early 2009, Kuvend passed changes to the Law on Legalization, Urbanization and Integration of Unlicensed Buildings that would transfer responsibilities of local government to the state run *Agjensia për Legalizim, Urbanizim dhe Integrim të Zonave të Ndërtimeve Informale* (ALUIZNI) [Agency for Legalization, Urbanization, and Integration of Informal Buildings]. The changes were brought before the Constitutional Court by PS parliamentarians and the Court declared the amendments unconstitutional. However, in May 2009, the government passed a Council of Ministers' Decision which foresaw that local governments would not execute their responsibilities on time and thus mandated that these duties should be transferred to the ALUIZNI. The decision challenged the earlier Court ruling as well as constitutional principles which clearly

emphasized that the distribution of power may not be altered by a simple majority law or by a subordinate legal act. The government was found to overstep its responsibilities regarding local government.<sup>22</sup>

The conflict even became physical when at the beginning of November 2009 a dispute took place in downtown Tirana between the construction inspectorate of the municipality and the state police, ending in violent clashes. The conflict arose over a decision by the government to halt construction of the city center plan approved by the Territorial Control Council of Albania in 2004 and later approved by the Territorial Control Council of Tirana in October 2008 after an international competitive bidding process. The government demolished the construction site, stating that it would build a public park on the area that had been designated for private investment. One of the investors affected by the government's action was a stockholder of *Vizion Plus*, a TV media outlet known for its criticism of the government.<sup>23</sup>

Since becoming Prime Minister in 2005, one major concern of PD chairman Sali Berisha, has been to regain control of the Tirana municipality. PD had controlled the municipality of Tirana from summer 1991 to October 2000 when lost it to Edi Rama. Ever since, PD has lost every mayoral electoral race in the capital city even though Premier Berisha has endorsed some of the most popular politicians from his party. PD's failure to regain the Tirana municipality has had negative repercussions for the decentralization process in the country. Ever since it took the control of the central government, PD has expanded the range of local government responsibilities, while continuing to control most of the local taxes and even narrowing opportunities for expansion of local fiscal capabilities.

Opposition complaints against the government's efforts to reduce the fiscal base of local governments received some international recognition when a Report of the OSCE Presence in Tirana claimed that "[t]he 2009 amendments to the Law on Local Taxes appear to conflict with the Law on the Organization and Functioning of Local Government that grants local government the right to establish fees in connection with the cost of service provision."<sup>24</sup> Another view maintains that the Law on Loans to Local Government, adopted by a unanimous vote of the *Kuvend* in February 2008, will eventually enable municipalities to increase long-term local investments. However, the

ministry of finance has yet to complete the implementing legal acts.<sup>25</sup> The 2009 parliamentary election has also had a deleterious impact on the performance and reform of local government in Albania as it has resulted in a number of diminished local responsibilities, budget cuts, and polarization of the country's political life to such an extent that a number of municipal councils faced difficulties in approving their budgets for several months.<sup>26</sup>

On April 10, 2010, Bledar Çuçi, a former secretary general of the Ministry of Local Government and Decentralization and the current spokesperson for *Shoqata për Autonomi Vendore* (ShAV) [Association for Local Autonomy], an organization that represents elected local officials from the PS, appealed to the government to stop blocking foreign funding for development projects in municipalities administered by PS officials.<sup>27</sup> This statement was released after the Representative for the World Bank in Albania, Camille Nuamah, complained that the Albanian Ministry of Interior in charge of implementing one component of the Land Administration Project (LAMP) “has not awarded any civil works contracts, despite consistent efforts and support by the World Bank during its supervision of the project.”<sup>28</sup> LAMP is the largest and perhaps most complex project the bank has financed in Albania; a US\$56 million (with US\$35 million coming from the World Bank) venture involving three ministries—justice, public works and interior—and 10 municipalities—Berat, Durrës, Elbasan, Fier, Gjirokastër, Kamëz, Korçë, Lushnjë, Shkodër and Vlorë. This project is also co-financed by the Swedish International Development and Cooperation Agency (SIDA) and the Japanese government, and has three distinct, but related components. PS' complaints against the government imply that eight of the ten municipalities which are administered by PS mayors have not received the untapped LAMP awards.

By the end of 2010, the political struggle between PS mayors and the PD government erupted over two hotly contested issues. First, the PS appealed to the government to withdraw a bill from *Kuvend* regarding changes in the current law on local taxes that, according to the mayor of Tirana, Edi Rama, “seeks to shift on the local government the burden of government corruption with the newly introduced cash registers.”<sup>29</sup> In Rama's views, the government was trying to take the municipalities administrated by mayors of the opposition party hostage on the eve of the spring 2011



local elections. In addition, the ShAV called upon the government to discuss items related to local government in the 2011 state budget before the parliamentary procedures for its approval.<sup>30</sup> Second, the government attacked the new urban plan of the capital city. The new plan was drawn by a French studio selected from an international competition organized and financed by the municipality of Tirana in 2008. Even though the Tirana Territorial Adjustment Council approved the new plan in the same year, in November 2010 the Government threatened to reject it, claiming that it does not satisfy all the needs of the capital.<sup>31</sup>

The political struggle between the PD dominated central government and the PS dominated local governments has also attracted criticism from international observers noting that “a less politicized dialogue is needed among central and local government in order to foster a clearer framework.”<sup>32</sup> One of these observers, the Head of the OSCE Presence in Albania, Robert Bosch assesses the current state of local decentralization in Albania as follows:

The process [of local decentralization] itself often appears disjointed and lacking in transparency as the Government’s approach currently lacks clarity regarding the desired structure of local and regional government. The provision of financial resources to local government has not kept pace with their expanded scope of responsibility and authorities for public service provision. New legislation in areas such as territorial planning, construction inspection and water supplies further challenged the principles of local decision making. The role of local government associations as advocates for common local interests also needs to be strengthened in order for them to achieve their considerable potential. The distributions of funds to the local authorities is also often less objective, meaning municipalities ruled by majors of the opposition are less favoured especially with regard to the so-called competitive grants which are allocated in competition on top of the standard grants.<sup>33</sup>

In 2005, Freedom House introduced the Nation in Transit Rating and Average Scores, a ranking of local government democracy for countries in transition.<sup>34</sup> Ranging from 1 to 7, the score reflects the nation's level of local decentralization, with 1 denoting the highest possible level of local democracy and 7 denoting its total absence.<sup>35</sup> Table 5-1 displays the scores assigned to Albanian local democratic governance.

TABLE 5.1 THE LEVEL OF ALBANIAN LOCAL DEMOCRATIC  
GOVERNANCE

1999- 2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
n/a	n/a	n/a	n/a	n/a	3.25	2.75	2.75	2.75	2.75	3.00

Source: Freedom House, 2010

The scores in Table 5-1 generally fit the observations of this empirical analysis for the period 2004-2009 (the years indicate the release of the score, thus they reflect developments of the previous year). As in other cases, the PD returned to power with the promise of reforms. The 2006 Report, which indeed reflects progress during 2005, shows that PD-led government's policy of increasing local governments' competences, as well as its tax basis, significantly improved the level of decentralization in the country. However, my account reveals nothing that would cause the level of decentralization in Albania to move from 2.75 to 3.00. Therefore, I have interpreted the reform progress of that time simply as "reform halts" rather than "reform reverses."

*A consociational interpretation of EU motivations over the Albanian decentralization reform*

Albania is a unified society. Thus, consociational practices are needed only to build institutions that would be receptive to EU consociational practices during the country's accession negotiations with the EU and its subsequent integration with EU institutions and processes. A local government built by consociational practices and receptive to them can be a powerful instrument for maintaining social cohesion in a deeply divided society. However, such local governance might be unnecessary in a unified society. The case of

the EU shows that it may be unnecessary even in a deeply divided society (in this case, the society of EU member states) if that society applies consociational practices to other institutions and policy areas. EU member countries utilize different local government systems and the EU has not included any local governance model in its Copenhagen criteria or Agenda 2000; nor does the EU usually assess in its annual progress reports a country's state of local decentralization or offer specific recommendations regarding the topic. Indeed, there exists no agreement about how much decentralization is right for a country. Some scholars argue that a model of decentralization that may be appropriate for a federal state such as Russia, with its large territory and population diversity, may be inappropriate for small countries such as Albania (Sewell and Wallich 1996: 252).

The 2010 Commission Opinion on Albania's application for EU membership does not refer to decentralization reforms in its rejection of the Albanian application.<sup>36</sup> Nor do the recommendations for mid-term development towards opening accession negotiations mention local decentralization.<sup>37</sup> Again, quoting OSCE's Robert Bosch, "the government's approach currently lacks clarity regarding the desired structure of local and regional government." Yet, the EC neither recommends one nor seems to possess a strategy for the rest of the EU; local government models and levels of decentralization of EU member countries widely vary. Thus, as Grabbe has pointed out, although the EU has advocated greater decentralization and regional development in CEECs, it has no clear model of regionalism to present.<sup>38</sup> If we go back to Gabel's description of the EU as a "consociational democracy," we can easily distinguish that the model of local governance and the level of local decentralization play a role neither in establishing the EU as a stable democracy nor its maintenance as such. Local decentralization is not usually a consociational practice, hence, in the case of Albania, discussion is absent from EU membership conditionality.

#### *A sectorial interpretation of Albanian decentralization reform*

The Albanian local decentralization relies mainly on the political will of domestic leaders. The CoE can pressure governments to sign the ECLSG, but cannot do much about its implementation. However, as a CLRA report notes, a very positive feature of Albanian politics is that every political party, whether ruling or opposition, and all key

administration and civil society actors, unanimously agree that decentralization and the creation of an effective system of local government are to be given the highest priority (Rhodio and Van Cauwenberghe 2006: 5). However, the political parties do not always agree on how to tackle these problems and to what extent the territorial structural reform needs to be taken. One of the major difficulties in achieving the necessary consensus is the high level of distrust between the two main political parties, the PS and the PD. One of the byproducts of this mistrust has been a series of attempts by the ruling coalition to control local government. Yet, ostensibly, Albanian government's interests in controlling local government seem to have been undermined by the poor results these efforts have produced during the last 16 years, the growing pressure from local officials demanding more decentralization, and different NGOs focused on local development (Hoxha 2002: 5).

From 1992 to present, Albanian leaders' interests in decentralization have shifted from positive to neutral to negative. In 1992, the positive interest of the PD in decentralization resulted with the first local government reform after communism.<sup>39</sup> After local elections of July 1992, however, the reform stalled until 1996. The PD's interest in decentralization turned negative as it could increase the autonomy of the predominantly PS local governments. The Albanian elites also dropped decentralization as a priority from 1996-1998 as the country was facing other, more acute problems. Decentralization reform advanced in 1998-2000. The PS led ruling coalition wanted to display to domestic and international audiences that their communist past was over, and that they had embraced the rules of democracy governance efficiency. However, the PS' internal power struggle brought decentralization reform to a halt. The reform revived in 2006 as the PD took control of the government after its electoral success in the summer of 2005. On the one hand, the PD wanted to demonstrate that it had abandoned its previously authoritarian ruling style; on the other, the PD was hoping that its candidates would win the fall 2006 local elections. The PS' electoral takeover of local governments in some of the most economically productive municipalities curbed the PD's interest in expanding local autonomy. Ever since, decentralization reform has either stalled or, in some areas, even reversed. Table 5-2 summarizes these findings.

TABLE 5.2 DEVELOPMENTS IN ALBANIAN LOCAL DECENTRALIZATION REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1992		0	+	<b>Good progress.</b> The reform created a considerable degree of political autonomy to local authorities, some services in favor of local communities, and wider administrative and financial autonomy. These laws enshrined the principle of local self-governance as one of the basic goals and principles of local governance in Albania
1992-1996		0	--	<b>No reform.</b> The PS' electoral success in the 1992 local elections doomed any deepening of decentralization reform by the PD led central government.
1996-1998		0	0	<b>No reform.</b> Political destabilization put local decentralization out of the political agenda.
1998-2000		0	+	<b>Good progress.</b> The legislative framework underpinning decentralization reform helped the country to comply with 19 ECLSG articles, 11 of which are core articles. Yet, Albanian legislation still remains at odds with ECLSG on issues related to the administrative control of the central government over local administration.
2000-2005		0	--	<b>Reform halts.</b> Some local decentralization legislation were passed, but most of the measures undertaken were follow-ups of the 1998-1999 policies rather than a sign of any positive political will.
2006		0	+	<b>Good progress.</b> This represents the PD's first year in power during which time the party tried to implement some of its electoral promises and hoped to expand its electoral base for the upcoming local elections.
2007-2009		0	--	<b>Reform halts.</b> The PS' electoral success in the local elections of Fall 2006 curbed the PD's interest in expanding local decentralization.
2010		0	--	<b>Reform halts.</b> Some changes in tax law can be interpreted as a setback for local decentralization reform. The difficult victory of the PD in the 2009 general elections has decreased PD officials' confidence in achieving victory in local elections scheduled for spring 2011.

## **Conditioning Consociational Practices in Local Governance: The Case of the Macedonia**

For Macedonia to become the multiethnic state agreed up in Ohrid, reforms were required in at least three major areas: ethnic representation in state jobs, including the security forces and the army; the improvement of ethnic, and especially Albanian, public education; and a deep decentralization reform that should guarantee responsibilities to municipalities without devolving into a federal system. Therefore, analysis of the local decentralization reform in Macedonia implies first and foremost an examination of the dynamics of ethnic politics in the country. However, since the *problematique* of the rest of the Eastern European democratic reform haunts Macedonia as well, one can easily imagine the challenges faced by country's decentralization reform. Macedonian leaders have oscillated from strong support for the reform to dragging their feet, while Albanian political leaders are eager to exploit such reluctance in their political rhetoric, and EU wants to see the Ohrid Agreement fulfilled as a guarantee of peace and stability in the country. Thus, we can test both elements of my argument, i.e., explain how the EU continues to insist in exporting consociational practices to Macedonia in order to ensure its cohesion as a possible unified pillar in accession negotiations; and, how the combination of different preferences among the main actors, including domestic actors, lead to policy outcomes.

### *Macedonian decentralization reform*

Macedonia initially inherited 36 municipalities from the Yugoslav system which consisted of the country's major cities and their surroundings. The 1996 Law on Territorial Organization<sup>40</sup> increased the number of these municipalities to 123, plus the large municipality Skopje, the nation's capital. Pre-existing municipalities in some local administrative units were thus split into smaller units "with no essential prerogatives and no intermediary level between them and the central government."<sup>41</sup> During this period, the Macedonian political process was sharply divided along both political and ethnic lines. The central government had little access to Albanian dominated municipalities. Moreover, the country's local governance remained monopolized by the largest ethnic party in particular territorial units. As a result, the local authorities proved inefficient,

with limited capacity to address the needs of local communities not only in terms of ethnic grievances, but also in terms of local social, economic or infrastructure development.<sup>42</sup>

The causes for the delays in Macedonia's local government reform rest on attempts by the central government to reduce the political influence of the Albanian minority. While the collective and individual rights of Albanians in Macedonia had been significantly expanded since independence, Albanians continued to consider such progress insufficient.<sup>43</sup> Macedonian leaders' interests in delaying major decentralization reform mirrored the widespread fear among the Macedonian population that decentralization might lead to federalization and subsequently the autonomy of territories predominantly inhabited by ethnic Albanians (Marko 2004: 13). Arguably, for most Macedonians, local decentralization

is not a matter of territory or more abstract constitutional arrangement. The unitary state established after the break of the SFR of Yugoslavia is at the core of the very identity of the Macedonian nation and is perceived as a major guarantee for its survival. Namely, the fear for autonomy in Albanian populated areas has prevented a deeper and meaningful decentralization throughout the entire period since the establishment of the republic.<sup>44</sup>

One must keep in mind that 1991-1999 was a period of economic and political stagnation. This slow and gradual reformation of Macedonia has been affected by a complicated nation-building process as much as by the lack of will of leaders of the ruling, former-communist *Socijaldemokratski Sojuz na Makedonija* [Socialdemocratic Union of Macedonia] (SDSM) to institute such reforms. During much of the 1990s, the country marked little progress in any reform program. However, Macedonia signed the European Charter of Self-Government in 1996 and ratified it in 1997. Indeed, these milestones can be considered as the initial steps necessary for a decentralized, local government system. Yet it took two more years for the VMRO-DPMNE government to finally include in 1999 some measures for decentralizing the local government within the country's Strategy for Reforming the Public Administration. In order to implement these

policies a working team was created within the *Ministerstvo za Lokalna Samouprava* (MLS) [Ministry of Local Self-Government] in March 1999. Meanwhile, a government report for LSG activity during the period of 1996-2000 was deemed adequate to serve as a backup document for decentralization reform.<sup>45</sup>

Despite these minor developments, Macedonian ruling elites showed little interest in the decentralization process during 1991-2001. Meanwhile, the EU, trying to avoid another conflict in the Balkans, praised Macedonia as an “oasis of peace,” and remained committed to maintaining political stability in the country. Perceiving local decentralization as a risk to the country’s stability, the EU preferred the latter rather than the former. Hence, the EU interests in local decentralization during the period 1991-2001 were neutral.

The Ohrid Agreement did not relieve Macedonian fears related to what they perceived as the hidden agenda of Albanians. Macedonians, therefore, continued to see the Agreement as a straightjacket that needed to be circumvented in order to maintain the pre-Ohrid Macedonia, yet not endanger their prospects for EU membership. Fears that adhering to the Ohrid Agreement may endanger the existence of the Macedonia for Macedonian people and, even worse, imperil the state’s further existence, have had a major impact on discussions related to implementing local decentralization policies as foreseen by the Ohrid Agreement. Similar to constitutional reforms, both Macedonians and Albanians seemed to regard devolution of power to the local governments as a zero-sum game where one gained control over communities at the expense of the other (Brunnbauer 2002: 16; Loomis, Davis and Broughton 2001: 17). Macedonians fear the so-called Albanian hidden agenda in local decentralization, which implies that, once the Albanians take control of a decentralized local power in the areas where they are the majority, they will develop centrifugal tendencies and eventually secede. Moreover, they also fear that the Macedonian identity will be threatened in the Albanian dominated areas (Brunnbauer 2002: 16; Loomis, Davis and Broughton 2001: 17).

A clear confirmation of these fears happened when, in Fall 2001, the Minister for Local Government in the National Unity Government, Faik Arslani, an Albanian from PDSH, submitted to *Sobranie* a bill for a new law on local self-government. Reportedly, the bill was drafted with the assistance of experts from CoE. While the draft proposed



wide-ranging responsibilities for local communities in education and health care, it alarmed the Macedonian parliamentarians as Article 61 provided the opportunity for communities to merge and create common administrations (Balalovska, Silj, and Zucconi 2002: 74; Brunnbauer 2002: 16). In spite of the real intentions of its writers and proponents, the proposal could be easily interpreted as an attempt to merge Albanian dominated municipalities in the Northwestern and Western part of the country. Macedonians were also concerned that the state's authority in Albanian dominated areas would be further weakened if devolution went too far. Moreover, the opponents of Arslani's proposition pointed to the hostile attitudes of Albanians toward formal institutions in Albania and Kosovo, hence alluding that Albanians in Macedonia would display the same hostile behavior.

Both of the main Macedonian parties opposed the original version of the bill and suggested amendments, thus resulting in the postponement of an international donor conference. Albanian parties began to boycott parliamentary sessions and threatened to continue as long as Macedonian parties did not withdraw their amendments to the original draft. Only after intense and painstaking international mediation, mainly by then Chief of EU Common Foreign and Security Policy Javier Solana, was it possible to reach a compromise. As Mr. Arslani explained in the parliamentary debate over the conciliatory bill, instead of common administration, now the bill allowed for the establishment of common administrative bodies among the municipalities.<sup>46</sup>

The Law on Local Self-Government passed in January 2002 amidst squabbles over who would have access to the lucrative state Health Fund. Moreover; although the Law expanded municipal capacities, it gave little direction for implementation. The transfer of a dozen functions performed by the central government to local governments still lacked a mechanism or schedule. In the key health care sector, certain responsibilities and funds have actually been turned back to the centralized Health Fund while municipalities retain only the administration of primary health care services (Marko 2004; International Crisis Group 2003: 17). According to the proposed amendments, the local administration director would be appointed by the mayor and not the municipality council.<sup>47</sup> In order to adopt three additional laws to regulate this sphere as well as the needed changes to some eighty other laws, the deadline for implementation was

prolonged to the end of 2003. It was finally passed by an almost unanimous vote on January 25, 2002 (Ibid).<sup>48</sup> Reportedly, [t]he US Department of State welcomed the agreement on the Law on Local Self-Government reached by the political leaders in Macedonia.<sup>49</sup>

Article 22 of the new Law on Local Self-Government enumerates a list of twelve activities transferred to local government;<sup>50</sup> but it did not include or schedule how and when to transfer these powers. In addition, two more laws were required according to the Ohrid Agreement: a law on local finance and a law on municipal boundaries. A meeting of the Ohrid signatories in December extended all the decentralization deadlines until the end of 2003, thus undermining the goal for harmonization of laws that would make implementation of the new Law on Local Self-Government possible. Finally, the completion of the transfer of responsibilities was postponed until after local elections in late 2004 (Marko 2004: 14).

The process of implementation of local decentralization as stipulated by the Ohrid Agreement met objective and subjective hurdles. First, the slow pace of decentralization reflected the need to resolve all questions of financing and boundaries before transferring responsibilities (Marko 2004/5: 14).<sup>51</sup> Another source of delay was the IMF insistence that municipalities be barred from assuming debt and that they should be consolidated into more economically viable units.<sup>52</sup> A criteria of good governance required that, as Minister of Local Self Government Aleksandar Gestakovski highlighted, virtually all questions of financing and boundaries be resolved before any substantial transfer of responsibilities (International Crisis Group 2003: 18). However, Annex B of the Ohrid Agreement stipulated that the law on local finance should have been adopted by the middle of the 2002—that was, the end of the parliamentary term—and the law on municipal boundaries by the end of 2002. Taking into account the much delayed census results, the parties then largely recognized that the law on municipal boundaries had priority over the law on local finance. However, as International Crisis Group (2004: 18) pointed out, the government could transfer powers that require little money to select municipalities as it continues to work on the complexities of full decentralization. Moreover, reportedly, some mayors have expressed strong willingness to cooperate over projects such as water treatment plants. Keeping in mind that municipal cooperation is

freely permitted in the Law on Local Self-Government, and with active international support this could help reduce tensions and stimulate further local activism, it can be concluded that the government's continues to display centralizing tendencies (Ibid).

Obviously, such a clash of a good governance principles and the political stipulations of the Ohrid Agreement allowed room for political maneuvering, Prime Minister Crvenkovski tried to represent the process as a zero-sum game (Marko 2004; UNDP 2004: 83). The Albanian leaders had their own difficulties: reportedly, Ahmeti's "blasé attitude" toward the reform reflected his problems with the Albanian mayors elected in 2000 from the rival PDSH party (International Crisis Group 2004: 17). Pressed about the slow pace, a frustrated Minister of Local Self-Government Aleksandar Gestakovski predicted that decentralization would take "ten to fifteen years to complete" (Ibid). As for the international actors, a total of 23 foreign government agencies, international organizations and NGOs were separately working on Macedonian decentralization with little coordination among them (Marko 2004: 17).

The operational program for decentralization that the government began to implement in 2003 listed 38 laws needed to complete the transfer of power from central to local governments, in addition to 12 other laws on related matters such as fiscal decentralization, territorial restructuring, local elections and citizen participation. A mixed group of officials and experts began working to reduce the number of municipalities from 123 to between 60 and 67. With the Council of Europe's assistance, the Ministry of Local Self-Government developed five main criteria for eliminating municipalities related to size, economic resources, adequate municipal property, infrastructure, and natural and geographic conditions. The minister cited a sixth criterion which was not registered in the government document: specific historical and cultural features, a blatant attempt to preserve certain ethnically distinct municipalities (Marko 2004: 15; International Crisis Group 2003: 20).

Moreover, these criteria fueled political rivalries as each ethnic group tried to maximize its benefits. Reportedly, a BDI representative frankly explained:

We want to maximize the number of municipalities where Albanians make up 20% of the population (and thereby make Albanian an official language) and we want to bring

Albanians into connection with the urban center. The Macedonians wanted the opposite, namely, to preserve Macedonian urban control, keeping Albanians in rural areas, and minimizing the number of 20% Albanian municipalities” (Marko 2004: 15; International Crisis Group 2003: 20).

However, both Albanian and Macedonian locally elected officials from small municipalities feared consolidation since many stood no chance of being elected in larger territorial units.

In February 2004, the ruling coalition began to discuss municipal border revisions during closed door meetings between the three partners of the ruling coalition, SDSM, BDI, and *Liberalno-Demokratska Partija* (LDP) [Liberal Democratic Party]. Reports were regularly leaked to the press, revealing that key municipalities such as Struga, Skopje, and Kičevo had become the topic of hot political debate (Marko 2004/5: 15). The redistricting efforts sparked public protests as it was perceived as an attempt to destroy the unitary character of the country and disregard local interests and traditional regionalisms. Thus, the Skopje-based Center for Research and Policy Making (CRPM) criticized the process for being developed without broad public debate on the new territorial boundaries of the municipalities; consultations with local officials within the *Zadničja na Ediničite na Lokalna Samouprava* (ZELS) [Association of Local Self-Government]; and consideration of the concerns of foreign and domestic experts. The process was also criticized for not taking into consideration the will of the people, ignoring in particular the expressed objections of 41 municipalities for redrawing the district boundaries. Moreover, the process was considered in violation of Article 3, Section 2 of the Ohrid Agreement which proclaims that “the revision of the municipal boundaries will be effectuated by the local and national authorities with international participation.” Finally, CRPM stated that the process put Macedonia at odds with its international commitments since the country had signed and ratified the European Charter of Local Self Government which states that “changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by

means of a referendum where this is permitted by statute” (Article 5) (Daskalovski 2006: 209).<sup>53</sup>

These objections came from the ethnic Macedonian public and organizations which promoted Macedonian dominance; their argument often stressed technical matters and good governance instead of addressing the underlying fears of Macedonians that the new divisions would create an administrative territory controlled by Albanians which stretched uninterrupted throughout the western territories of the country.<sup>54</sup> Although the draft left about 55 percent of the existing local units unchanged, the Macedonian public was concerned about two different, yet interconnected, ramifications of the proposed bill. The first was related to good governance and the fear that some ethnic categories, namely Macedonians, would be denied access to public resources in cities where Albanians became majority, a concern supported by events occurring in the Albanian dominated cities of Tetovo and Gostivar where, after 1991, most Macedonians lost their jobs in the public sector with the Albanian takeover of after local governments.<sup>55</sup> Some Albanian municipalities have also expressed fears that if large Albanian villages such as Zajas and Velešta join Kičevo and Struga respectively, they will remain underdeveloped and lack access to public resources (ESI 2002). The second major ramification of the proposed bill according to Macedonians was the potential of erosion of *Macedonianness* in the new Albanian controlled municipalities as well as in Skopje. Some argued that municipal services in the Albanian language would waste municipal resources. Others claimed that the bill jeopardized the symbolic meaning of Skopje, and the capital of the Macedonian nation would lose its Macedonian identity (Daskalovski 2006: 213).

On July 15, 2004, the draft bill was presented in *Sobranie*’s floor and was passed on August 11<sup>th</sup> with only the votes of the ruling coalition. However, before the law was passed, it met fierce resistance from the opposition party VMRO-DPMNE. The latter partnered with *Svetski Makedonski Kongres* (SMK) [World Macedonia Congress], a diaspora organization who had organized a 20,000 participant protest in Skopje on July 27. From February of that year, SMK had begun to collect signatures for a referendum, but had managed to collect during the first six months of the initiative only 80,000 of the 150,000 signatures required (Daskalovski 2006: 213; Marko 2004: 15). Also, on the local level, while there had been protests and a series of referenda in 41 municipalities across

ethnic lines, those were ignored by the government coalition (Daskalovski 2006: 214; Marko 2004: 15). However, after the VMRO-DPMNE allied with the SKM initiative, their grassroots campaign increased citizen participation. As a result, by the August 23 deadline, the movement had collected 180,454 signatures, more than what was needed, causing President Trajkovski to declare a referendum vote on November 7, 2004 (Marko 2004: 15).<sup>56</sup>

Although poll data showed support for the referendum across ethnic lines, the overwhelming ethnic gap in such support—73.9 percent of Macedonians and only 7.8 percent of Albanians—shows the gulf between Macedonian and Albanian perceptions of decentralization reform.<sup>57</sup> The entire referendum propaganda was built on the dichotomous fear that the Macedonians would either lose their country or their bid for EU membership. The opponents of the referendum argued that a vote “for” would jeopardize country’s membership in the EU and NATO. The proponents of the referendum campaigned that Macedonia would not “lose” the EU since a vote “for” should not be considered against the Ohrid Agreement or the EU and NATO membership, but only against shady political maneuvers of self-serving groups during the reform drafting process (OSCE/ODIHR 2005: 14, 47). Moreover, they accused the government of national treason, bowing to ethnic Albanian demands and gerrymandering (International Crisis Group 2005: 3). However, while their explicit claims seemed to concern the political tactics employed, their campaign language suggested simply a return to the law of 1996 with no alternative proposals for decentralization (Marko 2004: 16). Local Macedonian officials, such as the mayor of Struga, rejected the law and proclaimed that the city would declare independence “following the example of Monaco, Andorra or San Marino” (Ibid).

Given the legal stipulation of the 50 percent threshold for the referendum to be valid, the government decided to undermine the referendum by using a demobilization strategy, appealing to people that it was “not worth an answer” (Daskalovski 2006: 215). The ruling coalition defended the reform as an obligation to the Ohrid Agreement, and then President Crvenkovski argued that decentralization was the most important part of the Ohrid Agreement (Marko 2004: 16). Ali Ahmeti of BDI, the Albanian partner of the ruling coalition stated in an Open Letter: Shall we participate in the referendum, thus

becoming a stumbling block for our country's integration into the European Union, or shall we vote for Europe by ignoring the referendum? Shall we vote for the future or the past” (International Crisis Group 2005: 3).

Support came also from the EU. The President of the European Commission Romani Prodi addressed *Sobranie*, and waved the EU carrot by linking the referenda results with the country’s future in the EU by stating: “Europe is here, at the reach of your hands [...] However, the decision depends on you [...] to say whether you want Europe” (Ibid: 4).

Two events affected the outcome of the referendum: first, with only two weeks from the referendum day, rumors circulated related the presence of uniformed men in the Albanian-habited village of Kondovo in the hills northwest of Skopje. As public and media tensions mounted concerning the group's origins and motives, it became clear that the group was a ragtag mix of 50 men from Kosovo’s UÇK, Macedonia’s UÇK, Albanian fighters from the Albanian-habited southern Serbian region of Preševo, and unemployed villagers. They threatened violence if the referendum passed. Second, on November 4, 2004, the US announced that it would recognize Macedonia by its constitutional name “The Republic of Macedonia.” That was a surprising decision since international arbitration on the name issue still continues under UN auspices. The US explained that although it recognized the name “Macedonia,” it still supported the UN process (International Crisis Group: note 21). The EU reacted quietly in support of the US position, sparking Greece’s outrage and threats to block Macedonia's accession unless the name issue was resolved. However, the very next day, Greek Premier Kostas Karamanlis assured fellow members in the EU summit in Brussels that Greece would not block Macedonian membership negotiations over the issue, but emphasized that the issue must be resolved before Macedonia could actually join the EU. The US action was greeted with great enthusiasm in Macedonia and gave President Crvenkovksi the chance to celebrate and reinforce the government’s message in a speech at a “victory party” celebrated on the eve of the referendum on Skopje’s main square (International Crisis Group 2005; Marko 2004).

To the surprise of even those who opposed the referendum, the 26.58% voter turnout was lower than anyone expected, thus making invalid 94.01% of votes “for.”

Scholarly efforts to find domestic reasons for the referendum's failure have emphasized the split in VMRO-DPMNE, the main opposition party (Marko 2004; International Crisis Group 2005). From the Albanian camp, keeping voters away from the polls was much easier since the referendum itself was perceived as an effort of the Macedonians to stall the implementation of the Ohrid Agreement. Although PDSH initially declared that it would ask its voters to vote "for" in the referendum as a protest against the slow implementation of the agreement, finally it boycotted the referendum. Arguably, Gruevski's VMRO-DPMNE saw the referendum as an opportunity to weaken the government's legitimacy and consolidate its image as tougher in defending the *Macedonianess* of the country. Even though he never spoke against the Ohrid Agreement, Gruevski campaigned against the government.

One interpretation is that the VMRO-DPMNE effort fell short, in large part because the party failed to provide an attractive alternative vision, and that simply striking a contrarian pose, something of a hallmark of Gruevski's leadership, failed to motivate voters (Ibid). This may not be a sufficient explanation, however, given the strong ethnic alignment of the country's electorate and the strong role that emotions play in people's political behavior in ethnically divided societies. However, it seems much more plausible to find the causes of the referendum's failure with international actors, namely the "carrot and stick" policy of the EU and overwhelming enthusiasm generated by the US' recognition of Macedonia by its constitutional name. As Marko (2004: 17) reports, polls published by the International Republican Institute (IRI) revealed that between June 2003 and April 2005, between 93-97 percent of respondents showed overwhelming support for Macedonia becoming a member of the EU. On the other hand, the US' support to the constitutional name of the country, against the wishes of a NATO ally, Greece, helped to sooth the Macedonian public's frustrations with US policies in the Balkans and Macedonia proper as they were perceived by Macedonians to be pro Albanian. I will discuss this issue in more detail in the next subsection.

The referendum led to the postponement of local elections previously slated for 2004. Those elections were eventually held in March 2005 and won by the parties of the governing coalition: the SDSM won 37 mayors and BDI 21. From the opposition camp,



VMRO-DPMNE placed 21 mayors and the newly formed VMRO-NP only 3, whereas the PDSH-PDP coalition won 2 mayoral seats.

The referendum's failure and the initiation of Macedonian decentralization reform increased citizens' acceptance of local decentralization. Whereas in 2003 almost the same share of Macedonians and Albanian Macedonians found the decentralization process "acceptable," namely 53.0% and 58.9% respectively, in 2004; just before the referendum, these figures increased slightly to 59.5% and 63.7%. In 2005, after the local elections, support rose to 73.7% and 81.2% (Marko 2004/5). Asked whether "the new law on territorial organization will improve the relations in your municipality," as many as 75.7% of Macedonians responded that they would stay the same or improve in comparison to 78.4% of the Albanians (Ibid). A major sign of a growing mutual confidence between the Macedonians and Albanians was the appointment in June 2007 of an Albanian Minister of Self-Government after successful negotiations between the ruling VMRO-DPMNE and PDP to bring the latter into the ruling coalition.

The implementation of the new Law on Local Self-Government has allowed municipalities since 2006 to raise funds from their own-revenue sources, government grants, and loans. According to the new law, municipalities are responsible for setting tax rates and municipal fees on property. In addition to these revenues, the law on financing the local self-government units permits grants to municipalities from the central budget, and also allows municipalities to borrow from capital markets, if approved by the ministry of finance.

By 2007, only half of municipalities fulfilled the criteria for entering into the second phase of fiscal decentralization.<sup>58</sup> Another 17 of the 85 municipalities entered into this second phase in July 2008, bringing the total to 59. The 22 municipalities not permitted to enter the second phase of fiscal decentralization were those still burdened by sizable debts, whose activities were blocked by legal proceedings related to arrears.<sup>59</sup> As a solution, the ministry of finance began the implementation of an EU-funded project to assist municipalities with public-finance management, especially those municipalities that have not met the financial criteria for entering the second phase of fiscal decentralization.<sup>60</sup>

In 2008, internal audit units were established in 28 municipalities, and during 2009 in 10 additional municipalities, but no program budgeting was introduced by the local government units. In 2009, *Zaednicata na Edinicite na Lokalna Samouprava na Republika Makedonija* (ZELS) [Association of the Units of Local Self-Government of the Republic of Macedonia] demanded from the government that the 3 percent of value added tax (VAT) allocated to municipalities be raised to 6 percent, while the personal income tax allocated to municipalities be raised from 3 to 30 percent. The government indicated willingness to gradually, until 2012, increase the percentage of VAT allocations to the municipalities from 3 to 4 percent but refused to change the percentage allocation of personal income tax. Upon demands by ZELS, the government agreed to change the law on minerals regarding the distribution of profits from mining concessions so that 78 percent are allocated to municipalities. More importantly, the government agreed to transfer oversight of land to be used for construction of buildings, and factories from the central to the local authorities, and is considering legal options for implementation.<sup>61</sup>

Table 5-3 displays the local democracy score of Macedonia according to the Freedom Houses' Nation in Transit annual reports.

TABLE 5.3 THE LEVEL OF MACEDONIAN LOCAL DEMOCRATIC GOVERNANCE

99-2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
n/a	n/a	n/a	n/a	n/a	4.00	3.75	3.75	3.75	3.75	3.75

Source: Freedom House, 2010.

As the table show, the failure of the 2004 referendum opened the way to the implementation of the 2004 Law on Local Self-Government, reflected in the score improvement from 4.00 to 3.75. Ever since, the progress has been slow and insufficient to bring about any score improvement.

#### *A consociational interpretation of Macedonian decentralization reform*

What sets apart the Macedonian decentralization reform from the same reform in any other unitary country in Eastern Europe is that, in Macedonia, local decentralization was seen not simply as a matter of good governance but as a political issue between the two main contending ethnic communities, the Macedonians and the Albanians. Therefore, the

EU had to condition this reform as a set of consociational practices. The most important of these practices is the application of minority languages as official languages in local units where they are spoken by at least 20 percent of the population. However, the rest of the Macedonian decentralization reform resembles other EE decentralization reforms, with conflicts between the local and central government over responsibilities and taxes that crosscut partisan and ethnic lines.

Local decentralization reform was seen as a key element of the Ohrid Agreement in three focus areas: decentralization of responsibilities in public services and fiscal policies (paragraph 3.1); the redrawing of local unit borders (paragraph 3.2); and the appointment of local police chiefs by local governments from a list proposed by the minister of interior (paragraph 3.3).<sup>62</sup> Even though Paragraph 3.3 remains a stipulation unique to the Macedonian case, its implementation seems to have been smooth.<sup>63</sup>

Thus, the implementation of Paragraph 3.1 resembles those of decentralization reforms in other EE countries. It is characterized by a struggle over responsibilities, a mutual distrust between the central and national governments, and scarce human and financial capacities by the local government.<sup>64</sup> This is a reform area beyond EU concerns for both Macedonia and other EE countries. The implementation of Paragraph 3.2 typically calls for the application of consociational practices. As the paragraph has been formulated, decentralization reform cannot be achieved through majority rule. Its implementation resulted with the creation of Albanian majorities in the towns of Kičevo and Struga as well as a 20 percent Albanian populace in Skopje and some other rural municipalities. On a larger scale, the latter implied that the language used by ethnic minorities in the municipality serve as an official language. Such a policy has been crucial for achieving peace and stability in Macedonia. It also entails proportional representation as a consociational practice, namely, the increase in the number of municipalities administered by ethnic minorities, reflecting these minorities' proportional share of local power. The redrawing of municipalities' borders increased the number of Albanian mayors in the March 2005 elections to 23, that is, 27 percent of the 85 municipalities. Meanwhile, the 20 percent requirement for implementing a second language as an official language at the local level replaced the majority requirement for the official status of minority languages at the local level.

Thus, the EU's strong support for Paragraph 3.2 of the Ohrid Agreement regarding Macedonian decentralization reform, as well as its almost indifference to the issues stipulated in Paragraph 3.1, are understandable. The EU recommendations to Macedonia in the Conclusions of the Commission Communication "Enlargement Strategy and Main Challenges 2010-2011," mention "constructive cooperation" between coalition members and emphasized the need for "more dialog [...] on issues concerning inter-ethnic relations.".<sup>65</sup>

These issues are interconnected: cooperation between coalition partners implies the cooperation of partners from different ethnic groups. The fact that the European Commission included recommendations for financial decentralization suggests that it connects the entire local decentralization process with the country's social cohesion. However, these conclusions came after the Commission recommended in November 2009 that the European Council open accession negotiations with Macedonia. Such soft language is quite different from Mr. Prodi's vigorous appeal to *Sobranie* to reject the referendum on the law on local self-government.

The following conclusions can be drawn: (1) the EU envisaged decentralization reform as an instrument to achieve democratic stability; (2) while the EU displayed interest in furthering Macedonian decentralization reform, it openly used the stick/carrot instrument when the issue of referendum emerged. The redrawing of municipality borders and implementation of minority languages as official languages at the local level are consociational practices applied during the Macedonian decentralization reform process, and are ones that the EU has conditioned.

Macedonia is a deeply divided society and the EU is expected to condition consociational practices in two levels; domestic and EU. In the case of Macedonian decentralization reform, the conditioning of consociational practices addressed only those policy aspects that were relevant for mitigating ethnic conflict. The lessening of ethnic tensions would eventually help Macedonia emerge as a single segment/pillar and allow it to negotiate consociational practices at the EU level. The EU is no longer conditioning local decentralization in Macedonia because the practices have managed to bring democratic stability. What is left from local decentralization reforms in Macedonia are policies that do not directly affect democratic stability. Yet, the EU does not possess, nor

provide guidance regarding a specific model and/or preferred level of decentralization. The very mentioning of local decentralization in the European Commission recommendations to Macedonia may reflect the EU's looming concerns over potential ethnic conflict in Macedonia, but might also simply be a residue of previous language used to assess reform development in the country.

*A sectorial contextual interpretation of the Macedonian decentralization reform*

We have thus mapped out the EU's interests in Macedonian decentralization reform. Earlier in this section we have analyzed Macedonian ruling elites' preferences regarding decentralization. To reiterate, until 1996, Macedonian ruling elites were not interested in decentralization reform. As discussed in a previous chapter, the former communists who won the elections in 1990 and 1994 had little interest in showing any rupture with the past. Their main concern was the consolidation of independence and national sovereignty; a decentralized local government was perceived as threatening both to the unitary character of Macedonia and its territorial unity. During the same period, the EU was interested in defusing any potential ethnic conflict in the Balkans, and Macedonian stability was perceived as more important than human rights and good governance. EU officials have often been either indifferent or critical to Albanian complaints about their lack of national rights.<sup>66</sup> A combination of the EU's neutral interest and Macedonian ruling elites' negative interest in local decentralization reform explains the absence of progress in that sector until 1995.

Two events changed Macedonian elites' interest in local decentralization reform in 1995: Greece lifted the embargo on the country; and the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Accord. Both these events increased confidence among Macedonian elites that the country's independence was assured and that they could therefore focus on domestic reforms to increase governance efficiency. The result was the 1996 law on territorial organization. Although the Law was a major leap forward as it substantially changed the local government system in the country, it still reflected the central government's fear of a widely decentralized local government; therefore, local government's responsibilities on public services and fundraising capabilities were extremely limited. Indeed, the 1996 law

concerned deconcentration more so than decentralization. There is no evidence that the EU displayed any special interest in Macedonian local decentralization reform during that period, and it appears that the reform was solely guided by domestic leaders' interests.

The local decentralization reform stalled until 1998 when VMRO-DPMNE won the elections and PDSH emerged as the largest Albanian party. The new government decided in 1999 to draft the strategy for reforming the public administration and included measures to improve local government's efficiency. But the exacerbation of ethnic tensions in the period 2000-2001 interrupted this project. However, it should be noted that the government continued to slowly progress with these reforms although it focused more on public administration reform than local decentralization. Again, there is no indication of any EU interests in the matter and the issue continued to rest with domestic elites. During the year of crisis, 2001, the EU's interest in Macedonian decentralization reform increased while Macedonian ruling elites remained adamant against deepening decentralization. However, an increased military pressure from UÇK and an effective "carrot and stick" policy from the EU, NATO and the US brought about the Ohrid Agreement and the 2004 Law on Local Self-Government.

Subsequent policy measures have reflected the gradual implementation of the 2004 Law more than a substantial deepening of local decentralization in Macedonia. However, while these efforts show the government's commitment to implementing the 2004 Law, Freedom House's 3.75 score for local democratic governance in Macedonia (despite its possible inaccuracies) shows that the country has a long way to go in expanding and deepening local decentralization. Currently, the EU's interest in Macedonian local decentralization has diminished, although the nation's central government remains committed to the process. The Macedonian fears over the country's federalization continue to negatively impact the local decentralization process in Macedonia, but that is not the only cause. Another impediment to progress might be the lack of human capacity to implement the financial decentralization package in some rural and underdeveloped municipalities, especially the Albanian municipalities. .

Table 5-4 charts the reforms over time as well as their outcomes.

TABLE 5.4 DEVELOPMENTS IN MACEDONIAN LOCAL DECENTRALIZATION REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1989-1995		0	—	<b>No reform.</b> During this period, Macedonian ruling elites were interested in promoting country's independence and national sovereignty rather than democracy and good governance.
1996)		0	+	<b>Good progress.</b> The end of the Greek embargo and the Dayton Accord alleviated some Macedonian existential fears, and helped the government to focus on reforms promoting democracy and good governance.
1997-2000		0	—	<b>No reform.</b> Reform stalled as leaders of the VMRO-PDSH coalition focused more on deconcentration than decentralization.
Jan-Jul 2001		+	—	<b>No reform.</b> The reluctance of Macedonian elites to expand Albanian political rights led to an Albanian armed rebellion and strong pressures from the EU and other international actors to undertake reforms that would improve Albanians' position in the life of the country.
Aug 2001-Nov 2004		+	+	<b>Good progress.</b> Local decentralization reform succeeds albeit strong domestic opposition.
2005-2010		0	0	<b>Slow progress.</b> This segment of the Macedonian decentralization reform is characterized by the implementation of the 2004 reform; yet, country's elite has been more focus on other policy priorities with stronger impact on country's progress toward EU membership.

## Conclusions

In the case of decentralization reforms, the EU exercised membership conditionality unevenly and inconsistently. EU membership conditionality aims at enforcing consociational practices in deeply divided societies such as Macedonia, but remains absent in united societies such as Albania. As my argument states, the EU recommends consociational practices in order to enable its membership aspirants to build institutions that lead to stable democracies. Thus, institutions in united societies who aspire to EU membership are asked to appropriate consociational practices that can improve democratic stability on only one level, the EU one, while institutions in divided societies are encouraged to appropriate consociational practices that can improve democratic stability at both domestic and EU levels. The lack of a unified EU decentralization model suggests that such a model plays no role in achieving and maintaining the EU democratic stability; hence there is no reason why the EU should condition it to EU membership aspiring countries. In the case of Macedonia, the EU conditioned local decentralization specifically so that Macedonia could emerge as a unified segment/pillar in the society of European states. However, not all of the Macedonian decentralization reforms required consociational practices and the EU has been very active only in conditioning consociational practices within the framework of local decentralization.

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<sup>1</sup> For the undemocratic, Communist Party controlled, centralist, economically dependent, ideological, and vertical characteristics of the Eastern European local government during the communist period see Coulson ed. (1995); Elander (1995); Illés (1993); Illner (1993); and Illner (1992).

<sup>2</sup> For instance, Tanas Tanasoski, a Macedonian local official in the Southern city of Ohrid told me that most of the Macedonian local officials accept the lack of decentralization in so far as it serves to preserve the territorial integrity of the country and the unitary character of the state. Later in the interview, he pointed out that most Macedonians see local decentralization as a step toward federalization and the eventual separation of the country.

<sup>3</sup> Interview with Arbën Xhaferi.

<sup>4</sup> Rhodio and Van Cauwenberghe (2006: 2).

<sup>5</sup> The National Strategy of Decentralization and Local Autonomy has been prepared during 1999 based on wide political participation. The National Committee on Decentralization composed of governmental members and local government representatives was the political organism that led the Strategy.

<sup>6</sup> For more details, see Decision for the Approval of the Strategy for Decentralization and Local Autonomy, Council of Ministers of the Republic of Albania, Nr. 651, 12 December 1999.

<sup>7</sup> During that period, *Kuvendi* approved a law package that included: Law on Taxes System in the Republic of Albania, Nr. 8435, 28 December 1998; Law on Taxes Procedure in the Republic of Albania, Nr. 8560, 22 December 1999; Electoral Code of the Republic of Albania, Nr. 8609, 8 May 2000; Law on Organization and Functioning of the Local Governing, Nr. 8652, 31 July 2000; Law on Territorial and Administrative



Organization in the Republic of Albania, Nr. 8653, 31 July 2000; Law on Organization and Functioning of the Tirana Municipality, Nr. 8657, 31 July 2000.

<sup>8</sup> These issues are: central government-local authorities' caccessedonsultation mechanisms (paragraph 4.6 Of ECLSG); the purpose of the administrative control (paragraph 8.2); the main focus of the financial autonomy as defined by the Charter such as: financial resources (paragraph 9.1).

<sup>9</sup> ECLSG, Paragraph 8.3.

<sup>10</sup> For figures on Albanian local government revenues and expenditures, see Albanian Decentralization Progress Report 2000, Urban Institute, and Institute for Contemporary Studies, Tirana, October 2001.

<sup>11</sup> Interview with Artan Hoxha, President of Institute for Contemporary Studies.

<sup>12</sup> Interview with Mr. Arben Imami, Minister of Local Government and Decentralization, September 2001-April 2002.

<sup>13</sup> Sali Berisha, "Speech at the Conference for the Donors' Activity Coordination in Decentralization and Local Government," Tirana, 8-9 May 2006.

<sup>14</sup> Sali Berisha, "Speech at the Conference for the Donors' Activity Coordination in Decentralization and Local Government."

<sup>15</sup> "Shalsi: Qeveria të na Kalojë Ujësjellesin" [Shalsi: The Government Should Transfer to Us the Water Company], (Shekulli, 29 October 2006).

<sup>16</sup> See Ditmir Bushati. "Albania." 2009. Freedom House. At <http://www.freedomhouse.org/uploads/nit/2009/Albania-final.pdf> [Accessed November 21, 2010].

<sup>17</sup> See *ibid*.

<sup>18</sup> "Congress President calls on Albanian authorities to fully comply with provisions of the European Local Self-Government Charter," (CLRA, Press release 025(2006), 17 January 2006).

<sup>19</sup> Freedom House. "Country Report 2008: Albania." At <http://www.freedomhouse.org/template.cfm?page=47&nit=443&year=2008> [Accessed November 22, 2010].

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid*.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*.

<sup>24</sup> "Report by the Head of the OSCE Presence in Albania to the OSCE Permanent Council, 9 September 2010." At [http://www.osce.org/documents/pia/2010/09/45985\\_en.pdf](http://www.osce.org/documents/pia/2010/09/45985_en.pdf) [Accessed November 18, 2010].

<sup>24</sup> Grabbe (2001: 1020).

<sup>25</sup> Ditmir Bushati. "Albania." 2009.

<sup>26</sup> See Gledis Gjipali. "Albania." 2010. Freedom House. At <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Macedonia-proof-II.pdf> [Accessed November 28, 2010].

<sup>27</sup> "Berisha ka bllokuar financimet e huaja për bashkitë e majta" [Berisha has Blocked Foreign Fundings for Left Municipalities], April 10, 2010. At <http://www.lajmifundit.com/lajmet/ekonomia/te-tjera/5168-berisha-ka-bllokuar-financimet-e-huaja-per-bashkite-e-majta> [Accessed November 18, 2010].

<sup>28</sup> "Press statement of Camille Nuamah, Country Manager of the World Bank Office in Albania," April 10, 2010. At <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ALBANIAEXTN/0,,contentMDK:22533723~menuPK:301417~pagePK:2865066~piPK:2865079~theSitePK:301412,00.html> [Accessed November 18, 2010].

<sup>29</sup> "Vendorët, Rama: Të tërhiqet ligji për taksat, merr 'rob' bashkitë" [The Bill on Taxes Must be Withdrawn: 'Takes Hostage' Municipalities]. *Shekulli*, November 6, 2010. At <http://www.shekulli.com.al/2010/11/06/vendoret-berishes-terhiq-ligjin-e-taksave.html> [Accessed November 19, 2010]. See also "Rama: Protesta, qeveria po kap 'rob' bashkitë e komunat opozitare" [Rama: Protest, The Government is 'Taking Hostage' the Opposition Municipalities]. *Shekulli*, November 10, 2010. "Rama: Protestë kundër talebanizmit të qeverisë" [Rama: Protest Against the Talebanization of the Government]. *Shekulli*, November 11, 2010.

<sup>30</sup> *Ibid*.

<sup>31</sup> "Olldashi: Do prishim planin rregullues të Tiranës" [Olldashi (Minister of Transports and Territory): Will Undo the Urban Plan of Tirana]. *Shekulli*, November 14, 2010. At

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<http://www.shekulli.com.al/2010/11/14/olldashi-do-prishim-planin-rregullues-te-tiranes.html> [Accessed November 19, 2010].

<sup>32</sup> "Report by the Head of the OSCE Presence in Albania to the OSCE Permanent Council, 9 September 2010." At [http://www.osce.org/documents/pia/2010/09/45985\\_en.pdf](http://www.osce.org/documents/pia/2010/09/45985_en.pdf) [Accessed November 18, 2010].

<sup>33</sup> Ibid.

<sup>34</sup> A notes that explains its meaning goes,

The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

See Ditmir Bushati. "Albania." 2009, p. 47.

<sup>35</sup> The ratings follow a quarter-point scale. Changes in ratings are based on events during the study year in relation to the previous year. Minor to moderate developments typically warrant a positive or negative change of a quarter (0.25) to a half (0.50) point. Significant developments typically warrant a positive or negative change of three-quarters (0.75) to a full (1.00) point. It is rare that the rating in any category will fluctuate by more than a full point (1.00) in a single year. The ratings process for *Nations in Transit 2005* involved four steps:

1. Authors of individual country reports suggested preliminary ratings in all seven categories covered by the study.
2. The U.S. and CEE-NIS (Central and Eastern Europe–Newly Independent States) academic advisers evaluated the ratings and reviewed reports for accuracy, objectivity, and completeness of information.
3. Report authors were given the opportunity to dispute any revised rating that differed from the original by more than .50 point.
4. Freedom House refereed any disputed ratings and, if the evidence warranted, considered further adjustments. Final editorial authority for the ratings rested with Freedom House.

See <http://www.freedomhouse.eu/nitransit/2006/methodology.pdf> [Accessed March 2011].

<sup>36</sup> The Opinion comments on the following policy areas:

1. Political criteria: democracy (constitution and legislative frameworks, parliamentary, political dialogue, elections), rule of law (reform of the judiciary, fight against corruption, organized crime), human rights and respect for minorities;
2. Economic criteria.

See "Commission Opinion on Albania's application for membership of the European Union." European Commission, COM(2010) 680. Brussels, November 9, 2010. [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Accessed November 20, 2010].

<sup>37</sup> Ibid.

<sup>38</sup> Grabbe (2001: 1020).

<sup>39</sup> See Sewell and Wallich (1996).

<sup>40</sup> Law on Territorial Division of the Republic of Macedonia and Determination of the Areas of the Local Self Government Units, Official Gazette (RM), Nr. 49/1996.

<sup>41</sup> Institute for Regional and International Studies (2006) "The Process of Decentralization in Macedonia: Prospects for Ethnic Conflict Mitigation, Enhanced Representation, Institutional Efficiency and Accountability," p. 9, URL (consulted May 26, 2007): <http://www.iris-bg.org/f/macedonia2.pdf>

<sup>42</sup> Institute for Regional and International Studies (2006) "The Process of Decentralization in Macedonia: Prospects for Ethnic Conflict Mitigation, Enhanced Representation, Institutional Efficiency and Accountability," p. 9. At <http://www.iris-bg.org/f/macedonia2.pdf> [Accessed May 26, 2006].

<sup>43</sup> See Daskalovski (2006: 66).

<sup>44</sup> Institute for Regional and International Studies (2006) "The Process of Decentralization in Macedonia: Prospects for Ethnic Conflict Mitigation, Enhanced Representation, Institutional Efficiency and Accountability," p. 11. At <http://www.iris-bg.org/f/macedonia2.pdf> [Accessed May 26, 2006]

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<sup>45</sup> Center for Economic Analysis (2006) "Press Release: CEA Comments on the EBRD 2006 Strategy for the Republic of Macedonia." At: [http://www.cea.org.mk/Documents/Press\\_release\\_EBRD\\_strategy\\_2006.pdf](http://www.cea.org.mk/Documents/Press_release_EBRD_strategy_2006.pdf) [Accessed May 26, 2006].

<sup>46</sup> Official Gazette of the Republic of Macedonia, Nr. 5/2002.

<sup>47</sup> "Macedonia – Parliament: Law on Local Self-Government Adopted." At <http://www.reliefweb.int/rw/rwb.nsf/db900sid/ACOS-64C3N4?OpenDocument&Click=> [Accessed October 11, 2010].

<sup>48</sup> As Brunnbauer (2002: note 21) reveals, it was the first vote that applied the double majority (Badinter) principle. Out of 93 present MPs 85 voted "for", four "against" and four restrained. According to amendment 16 to the Macedonian Constitution, the Law on Local Self-Government can be approved with a qualified majority of two-thirds of votes, within which there must be a majority of the votes of MPs, who belong to the communities not in the majority population of Macedonia. Out of 27 such MPs, 19 voted "for", granting five votes more than the necessary 14 (see the previous note).

<sup>49</sup> See "Boucher: Law on Local Self-Government Opens the Door for Donor Conference." At <http://www.reliefweb.int/rw/rwb.nsf/db900sid/ACOS-64C3N4?OpenDocument&Click=> [Accessed October 11, 2010].

<sup>50</sup> Official Gazette of the Republic of Macedonia, Nr. 5/2002. As Richard Boucher, a spokesman for the Department of State stated, "[w]e acclaim the adoption of the agreement between leaders of the major political parties in Macedonia and we think it is a big step forward towards implementation of the Framework Agreement."

<sup>51</sup> The number of laws to be adapted range from 44 (ICC 2003) TO 250 in Freedom House (2004: 421) (cf. Marko 2004: note 69).

<sup>52</sup> As ICG (2003: note 96) notes, the IMF appears to fear the impact of decentralization on central budgetary control; the prospect of multiple municipalities running up debt is a worst case scenario for the Fund and drives much of its caution.

<sup>53</sup> Another think tank, the Macedonian Center for International Cooperation stated that the process which resulted in the proposed local government re-organization was non-transparent; it disregarded the principles of public involvement, openness, and sincerity towards the citizens, which are all necessary while generating such crucial changes." Similar objections were voiced from the Macedonian Helsinki Committee, reminding the government that, since decentralization aims to satisfy citizens' needs and interests, it "should begin and end with active participation of citizens through their common will." Meanwhile, reportedly, the draft was also criticized by local decentralization experts who to the adjunction of the large Albanian villages of Saraj and Kondovo surrounding Skopje to the capital city in order to increase the municipality's Albanian population to above 20 percent, thus making Albanian the city's second official language. In addition, the southern city of Struga, where Albanians were slightly shy of the 50 percent majority, was slated to absorb some surrounding Albanian villages. Additionally, the draft anticipated that the municipality of Kičevo, located in western part of the country, which barely contained a Macedonian majority, would be expanded to surrounding Albanian villages in order to ensure an Albanian majority in the newly created municipality.<sup>53</sup> The experts stated that, adding a population of 30,000 rural habitants to 30,000 city dwellers would be impractical and unproductive. They also pointed to seven other municipalities that had been enlarged in a way that "seriously compromises the possibility for citizens to participate actively in the decision making process" (Daskalovski 2006: 211).

See also the Report of Helsinki Committee of Human Rights of the Republic of Macedonia "Decentralization and Sustainable Development," 2004. The Committee also pointed to

other cases, where ethnicity seems to be the sole factor influencing the decision on municipal boundaries, failed [sic] to meet the criteria of the municipal unit set by the Law on Decentralization itself. In 13 such cases, the condition that a municipality has more than 5000 inhabitants to secure sufficient economic and financial and human resources to perform its new prerogatives has been clearly overlooked. Finally, objections were raised to the erasing of the municipal status of some municipalities, which, regardless of their capacity to function as such lost their autonomy in order to alter the ethnic composition of other units (cf. Daskalovski 2006: 211-2).

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<sup>54</sup> Indeed, it is clear that ethnic consideration underpins the territorial division legislated according to the August 2003 law. As Ragaru (2007: 25-6) outlines some details:

The 2004 redistricting process was thus bound to be marred with “ethnic” considerations and afterthoughts, as were debates over the previous Macedonian territorial organization in 1996. In 2004, both sides knew what they were doing when the SDSM tried to guarantee that the road to the international airport located 7 km east of Struga near the lake shore would remain in an ethnic Macedonian municipality or when they negotiated the de-limitation of Skopje districts so as to guarantee that the Cyril and Methodius University, although on the side of the Vardar where Albanians now tend to predominate, would remain in *Centar* municipality, where ethnic Macedonians prevail. Similarly, the Albanian BDI was fully aware of the impact of drawing some Albanian villages and the city of Struga together. By giving ethnic Albanians a relative majority, they guaranteed that the next mayor would be Albanian, and indeed in March 2005 Ramiz Merko (DUI) was elected at the head of the enlarged municipality. Locally, his policies have been understood as primarily targeting his Albanian constituency - including an ill-fated initiative for placing a memorial to the killed municipal councilor, Nura Mazar, a.k.a. Commander Struga, an alleged *[sic]* former NLA member (the decision was adopted without applying the “Badinter rule”, as stipulated by the 2002 Law on Self-Government).

<sup>55</sup> The events resulting from the election of Struga’s mayor from Ahmeti’s BDI, Ramiz Merko, in the local elections of March 2005 justify these fears. As Ragaru (2007: 26) notes,

Many an *[sic]* ethnic Macedonian feel uneasy with recent changes within the municipality, such as extensive personnel reshuffle in ethnic institutions and renaming of streets, squares, buildings with Albanian names. Some feel Struga is now following the path Tetovo earlier undertook – a path toward ethnic homogeneization.”

<sup>56</sup> The referendum question on November 7 reads as follows: “Are you for the territorial organization of the local self-government (the municipalities and City of Skopje) as determined by the Law on Territorial Division of the Republic of Macedonia and Determination of the Law on Local Self-Government Units (Official Gazette of the Republic of Macedonia No. 49/1996) and the Law on the City of Skopje (Official Gazette of the Republic of Macedonia No. 49/1996)?”

— For

— Against (Marko 2004: 16).

<sup>57</sup> See UNDP (2004).

<sup>58</sup> Freedom House. “Country Report 2008: Macedonia.” At <http://www.freedomhouse.org/template.cfm?page=47&nit=460&year=2008> [Accessed November 22, 2010].

<sup>59</sup> See Zhidas Daskalovski. “Macedonia.” 2009. Freedom House. At <http://www.freedomhouse.org/uploads/nit/2009/Macedonia-final.pdf> [Accessed on November 22, 2010].

<sup>60</sup> See Zhidas Daskalovski. “Macedonia.” 2010. Freedom House. At <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Macedonia-proof-IL.pdf> [Accessed November 22, 2010].

<sup>61</sup> Ibid.

<sup>62</sup> The Ohrid Agreement on local decentralization reads as follows:

### 3. Development of Decentralized Government

3.1. A revised Law on Local Self-Government will be adopted that reinforces the powers of elected local officials and enlarges substantially their competencies in conformity with the Constitution (as amended in accordance with Annex A) and the European Charter on Local Self-Government, and reflecting the principle of subsidiarity in effect in the European Union. Enhanced competencies will relate principally to the areas of public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and health care. A law on financing of local

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self-government will be adopted to ensure an adequate system of financing to enable local governments to fulfill all of their responsibilities.

3.2. Boundaries of municipalities will be revised within one year of the completion of a new census, which will be conducted under international supervision by the end of 2001. The revision of the municipal boundaries will be effectuated by the local and national authorities with international participation.

3.3. In order to ensure that police are aware of and responsive to the needs and interests of the local population, local heads of police will be selected by municipal councils from lists of candidates proposed by the Ministry of Interior, and will communicate regularly with the councils. The Ministry of Interior will retain the authority to remove local heads of police in accordance with the law.

<sup>63</sup> Zhidas Daskalovski. "Macedonia." 2010.

<sup>64</sup> Ibid.

<sup>65</sup> Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2010-2011." European Commission, COM (2010)660 final). At [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Accessed November 23, 2010].

<sup>66</sup> This fact has been asserted to me especially by the former Chairman of PPD and Deputy Speaker of *Sobranie* Abdurraman Aliti, and the formet Chairman of PDSH and Member of *Sobranie* Arbën Xhaferi.

## CHAPTER VI

### JUDICIAL REFORMS

Let us begin with two observations about the judicial reforms in Albania and Macedonia. As one author (Taseski 2010) notes,

Establishing the rule of law, for Macedonia is not just part of the process of successful transition, but as a candidate for full membership in the European Union is a crucial requirement for the country to fulfill the political criteria [...] However Macedonia badly failed on the assessment from the European Commission. Although the progress report in 2008 stated that the country has progressed in adopting new legislation and changes in the judicial system, yet it concluded that the judicial branch is not independent and efficient.

Meanwhile, the European Commission's Communication on Albania 2010 Progress Report points out that

Serious concerns remain on the overall functioning, the efficiency and independence of the judicial. There is a lack of transparency in the appointment, promotion, transfer and evaluation of judges and there are considerable weaknesses in the inspection system of the judicial. The cases of nonrespect of Constitutional Court decisions by government in recent years and the politicization of the vote on the President's Constitutional and High Court appointments are of concern as they challenge fundamental principles such as the independence of the judicial and the respect for the rule of law.<sup>1</sup>

These two quotes bring us to one of the most contentious political reforms in Eastern Europe, judicial reform. Why do Eastern European countries (EECs) experience

such difficulties in conducting judicial reforms when those processes comprise vital components of the Copenhagen criteria and are the focus of direct and bold conditionality from the EU? Before answering this question, a brief look at the very nature of judicial reform is needed.

Carothers (2006: 7-8) outlines three types of reforms that together can be interpreted as an integrated judicial reform. Type one reforms involve the strengthening of law-related institutions, usually to make them more competent, efficient, and accountable. These reforms include increased training and salaries for judges and court staff, and improving the dissemination of judicial decisions. Targets of type one reforms include the police, prosecutors, public defenders, and prison administrators. Efforts to toughen ethics codes and professional standards for lawyers, revitalize legal education, broaden access to courts, and establish alternative dispute resolution mechanisms also figure into many of these reform packages. Type two reforms include strengthening legislatures, tax administrations, and local governments. Type three reforms aim at the deeper goal of increasing government's compliance with the law. As Carothers goes on

A key step is achieving genuine judicial independence. Some of the above measures foster this goal, especially better salaries and revised selection procedures for judges. But the most crucial changes lie elsewhere. Above all, government officials must refrain from interfering with judicial decision making and accept the judicial as an independent authority. They must give up the habit of placing themselves above the law [...] The success of type three reform, however, depends less on technical or institutional measures than on enlightened leadership and sweeping changes in the values and attitudes of those in power.

One can claim with confidence that EECs have successfully resolved problems with type two reforms. A number of regional and global IOs, foreign governmental agencies and actors, international and domestic nongovernmental organizations (NGOs), and even individual foreign and domestic experts have offered Eastern European (EE)

governments abundant technical expertise to draft laws and build judicial institutions and practices compatible with the best models in advanced democracies. As for type two reforms, Carothers (2006: 4) rightly points out that “the primary obstacles to such reform are not technical or financial, but political and human,” and that “[r]ule-of-law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law.” Type one reforms appear to be more complex; they imply the need for human capital to implement such reforms and keep judicial institutions functioning. While my research concerns Carothers’ type three reforms, a more careful analysis is needed to eliminate alternative explanations resting on structural factors mentioned under type one reforms.

One question arises, though: If the judicial practices are not traditional consociational practices that have helped to establish the EU as a stable democracy, why does the EU so forcefully require its membership aspiring countries to establish independent, impartial and efficient judiciaries? I argue that judicial systems represents some of the most powerful and efficient instruments for guaranteeing the maintenance of these consociational practices by all pillars. First, there can be no democracy without the rule of law; second, contracts need to be enforced for the market economy to operate; and third, the communitarian *acquis* must be implemented and, if necessary, enforced by the tribunals.<sup>2</sup> Since the EU lacks “federal” criminal and administrative courts, only separate national judicial systems functioning along similar judicial and administrative principles would make possible equal treatments of cases throughout the Union.<sup>3</sup> By guaranteeing stable democracies in their societies, these judicial systems make it possible for each of the EU member countries to exist as a united segment/pillar entitled and able to negotiate consociational practices with other pillar-states.

The rule of law is a prerequisite of the Copenhagen criteria that EECs need to fulfill in order to join the Union. In turn, the fulfillment of all the three Copenhagen criteria requires the establishment of the rule of law and an independent, impartial, competent and efficient judicial system that guarantees such a rule of law. The European Commission’s Agenda 2000 succinctly sets “independent judicial and constitutional authorities” as one of the components of the “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.”



On the other hand, the EE ruling elites tend to view the judiciary as the government's backyard. Several factors explain this behavior, but I argue that the need to employ the judiciary as an ally in power struggle is the most plausible explanation. In unified societies, the ruling elites tend to benefit the control of the judiciary against their political apposition, but in ethnically divided societies a ethnically controlled judiciary serves an ethnic group to the expense of others. However, there are political circumstances where domestic leaders' interest favor reforms toward independent, impartial and efficient judiciary system. Several factors impact such preference change, and EU membership conditionality is one of them. Combined, EU's and domestic leaders' interests in judiciary reform explain its outcomes.

### **Albanian Judicial Reform**

The collapse of communism left Albania with a totally politicized judicial system which primarily served as an instrument of the proletariat dictatorship. There was a total lack of judicial independence and due process of law. Moreover, private property abrogation and state monopoly on economy and trade under the former system made trade and civil codes irrelevant. The communist penal code was repressive and the entire penal system was accusative, that is, both prosecutor and judge were protectors of state interests, leaving the indicted stripped of legal defense rights.

In 1990, under the influence of democratic revolutions throughout Eastern Europe, the Albanian communist regime undertook the first steps for transforming its judicial system. Thus, for the first time after 25 years, the Ministry of Justice and the Bar institution were reinstated. The first pluralist *Kuvend* that emerged from elections in March 1991 had to primarily address constitutional issues. As a result of insufficient time for a full-fledged constitution drafting and approval process, as well as the inability of domestic actors to develop a compromise on a new constitution within a reasonable time limit, in April 1991, the *Kuvend* approved a package of 44 constitutional laws, the Major Constitutional Provisions, which constituted a provisional Constitution. While the Major Constitutional Provisions lacked constitutional arrangements for the judicial sphere, the abrogation of the old communist Constitution which forbade freedom of speech, citizens' association, peaceful protest, religion, movement and private property served as a major

political achievement, a dramatic improvement of the legal and judicial conditions in the country. Moreover, due to a political compromise, the composition of the High Court became more balanced with appointments from both of the major political groups, former communists and anticommunists. As the OSCE Report on Legal Sector Reform, 2004, points out, although the creation, organization, and activity of the courts and the judicial sector in general were left as they had been with the Constitution of 1976—except for segments inconsistent with the new constitutional structure—intensive work was conducted during 1991-1992 to restructure this sector.<sup>4</sup>

In spring 1992, Albania held its second multiparty elections which resulted in a landslide victory for the PD and its allies. The new PD-led government used its 2/3 parliamentary majority to introduce judicial reforms. The process began with revising the existing Major Constitutional Provisions on the judiciary. First, the *Kuvend* passed Law No. 7596, April 29, 1992, which defined the shape of the judicial system and established for the first time in Albania the Constitutional Court and the High Council of Justice, a mixed judicial/executive body which supervises the lower courts.<sup>5</sup> Second, Law No. 7574, June 24, 1992 On the Organization of the Judiciary. Evaluating this portion of the judicial reform, the European Commission for Democracy through Law (hereafter the Venice Commission), released in December 2005 an *Opinion on the Albanian Law on the Organization of the Judicial*, noting that “the transitional Constitution of Albania provides in general for a reasonable constitutional basis for the significant reforms to the judicial system which have been established over the past four years.”<sup>6</sup> However, the general overview of the Commission on the 1992-1995 reform was more critical as it pointed to the setbacks caused by the Law on the Organization of the Judiciary by abrogating articles promulgating rights and duties of the magistrates stated in a prior ordinary Law on the Status of Magistrates.<sup>7</sup>

The 1992 judicial reform was driven by domestic actors’ interests to establish a functional judicial system in the new political and institutional context of postsocialist Albania. However, while domestic elites’ interest in this reform was positive, assistance from international actors has been insignificant and their interests can be considered neutral. Also, there is no evidence that would show any EU involvement either in providing technical assistance or recommending policies. In spite of OSCE criticism, the

overall progress of judicial reforms during this period can be considered satisfactory and was even recognized by the OSCE as such. As an OSCE report notes, many of the elements created at this time continue in a somewhat modified form under the Constitution that became effective on November 28, 1998.<sup>8</sup>

Foreign assistance to the Albanian government related to judicial reform began in 1992— soon after the amendments to the Major Constitutional Provisions—through the Council of Europe’s (CoE) programs as well as the joint CoE and European Commission’s Poland and Hungary Assistance for Restructuring their Economies (PHARE) program. Since 1993, the EU has provided funding for legal system reform and has co-operated with the CoE on its first joint program which was completed in June 1995. This program concentrated on drafting the Penal Code and the Code of Penal Procedure and also included intensive training for magistrates and other judicial staff. We can distinguish during that period a growing positive interest of both the EU and the CoE in Albanian judicial reform. Witnesses of Albanian political developments during this period explain that the interests of the EU and CoE rests with encouraging political stability in a country that inherited a total absence of legislative and institutional frameworks to support reforms.<sup>9</sup>

However, as we saw with other reforms, the positive interest on reforms by the Albanian ruling elites during the ‘extraordinary politics’ period of 1991-early 1992 turned negative with the shift to “ordinary politics” of 1992-1994. The main concern of the ruling *Partia Demokratike* (PD) [Democratic Party] became the consolidation of power through a combination of nepotism and intimidation of the adversaries.<sup>10</sup> Thus, the shelving of judicial reforms during this period parallels the lack and even reversal of some other reforms, and was caused by the rising authoritarianism of the PD in power and its inclination toward centralized rule. The Venice Commission delegation’s *Opinion* views the 1992 Law on Organization of the Judicial as a step backwards in establishing judicial independence from politics. First, the *Opinion* pointed to the fact that “questions of judicial qualification, appointment, transfer and discipline be left unregulated by either the Constitution or an Act of Parliament.”<sup>11</sup> Second, it criticized the fact that, in reality,

only some legislative action has since been taken, with the result that there is at present only piecemeal provision in the ordinary laws (adopted by Parliament) in force in Albania for

rights and duties of judges in the exercise of their judicial functions, or for their qualification for office, or the grounds and manner in which they may be appointed, transferred or dismissed.<sup>12</sup>

The *Opinion* of the Venice Commission reached its conclusion based on the most important piece of legislation of the Albanian judicial reform from 1992 to 1994, namely the 1992 Law on Organization of the Judiciary. It concluded that “the Commission wishes to record that it has been unable to satisfy itself that judges in Albania feel themselves free to arrive at their decisions without fear of negative consequences for their professional life.”<sup>13</sup> These remarks made clear that Albanian judicial reform during the period of 1992-1994 stalled and, in some aspects, even suffered setbacks.

A reply to the Venice Commission’s *Opinion* by then Albania’s Minister of Justice Hektor Frashëri unveiled the existing tensions between the CoE and the Albanian government. As Minister Frashëri noted in his reply, “it is incorrect to consider that to date no legislative action is in hand, or that no enactment of the Albanian parliament is in force in Albania [*sic*] for defining the rights and duties of judges, their training, etc.”<sup>14</sup> Furthermore, defending his government’s position, Mr. Frashëri continued on his counterattack by noting that he considers “incorrect the conclusion drawn in the third paragraph of item “e” that the relevant chapter of the Constitutional Law No. 7561 of 29 April 1992 does not specify the grounds for removal of district and appeal court judges, and that there is no other applicable statutory provision in this regard.”<sup>15</sup>

The PD’s failure to pass its constitution through a referendum, the persistent critiques from the CoE and the EU about the pace and direction of the country’s institutional reforms, and the PD’s need to overcome the referenda failure by securing Albania’s membership in the CoE—thus scoring a foreign policy success—drove the government toward judicial reform. The year 1995 became a period of intensive legislative activity related to judicial reform as *Kuvendi* passed the Penal Code, January 1995; the Code of Penal Procedure, March 1995, and the Military Penal Code, September 1995. In 1996, under the auspice of the CoE, the School of Magistrates for training and retraining judges and prosecutors was opened in Tirana while the government prepared the Law on the Office of the Judicial Budget.

In addition, in spring 1995, upon the request of Albanian authorities, a second joint program for judicial system reform was established with the EU and the CoE. The program comprised a series of specific projects including: (1) assistance to the Ministry of Justice for drafting an organic law as well as the bylaws needed for its implementation; (2) the establishment of the State Office for Publications; (3) the creation of the School of Magistrates for training and improving the professional capabilities of judges; (4) support for the Office of the Bailiff; (5) prison reform, including the establishment of a training academy for prison personnel; (6) reform of the police academy; improvement of administrative law, including assistance to make Albanian legislation compatible with the European standards; (7) assistance to draft a new constitution; and (8) reorganization of the Office of the Public Prosecutor. The success of the codification reform of 1995 stems from the positive interests of both Albanian and international actors, namely the EU and CoE, in the reform process. Generally, the Codes approved in 1995 continue to be used.

After acquiring CoE membership, the zeal of the DP government to pursue further judicial reform diminished. The government continued its highly criticized policy of replacing old judges inherited from communism with poorly trained PD militants who had primarily acquired knowledge of judicial procedures through intensive six-month courses. While the replacement of many old judges and prosecutors might have been necessary, the politicized manner in which the PD conducted the process jeopardized judicial independence and spurred reactions from opposition groups.<sup>16</sup>

Meanwhile, the Second Joint Programme confronted difficulties in full implementation. After the rigged election of May 1996, the pace of implementation slowed considerably due especially to the reconfiguration of country's political theatre. The political instability distracted leaders' attention from reforms as the ruling elites shifted their attention and resources to other political priorities. Political unrest and armed civil conflict between February and July 1997 led to a freezing of all PHARE activities in Albania until August of same year.<sup>17</sup>

There were lessons learned from the Albanian crisis of 1997 and the incapacity of the judicial to help prevent it. First, a successfully reformed judicial system would have helped the establishment of an independent, stable constitutional court which could have resolved conflicts between institutions. Second, an efficient penal system would have

prevented the illegal financial pyramidal schemes by dealing with the problem in its origins. Indeed, the judiciary's incapacity to arbitrate between the contending political fractions, ensure the safety of financial transactions, and guarantee that contracts were respected was a major cause of the 1997 crisis in Albania. Analysis of this segment of judicial reforms in Albania demonstrates that reforms, and the lack thereof, reflected the different levels of Albanian ruling elites' interest in controlling the judiciary. It also clearly shows that, without domestic willingness to develop reforms, such efforts are doomed.

After the general elections of June 1997, the Socialist-Centrist coalition led by the victorious PS initially demonstrated a willingness to work toward judicial reform. After having fought a difficult political battle during its five years of opposition, the new ruling coalition wanted to garner international support. The PS' political struggle as an opposition group has always been hampered by its Stalinist legacy. Therefore, most of the international partners of Albania continued to view the party's return to power skeptically. The PS decided to use its newly won majority in *Kuvend* to demonstrate to domestic and international audiences that it had abandoned its Stalinist legacy and was ready to embrace and play according to the rules of a pluralist society. Their desire to follow such a path, born by the party's need to redeem their thoroughly tarnished image, created enormous opportunities to resume reform processes that were stalled after their initial launching in 1992-1992.

Initially, the coalition was successful. As a report of the World Bank noted, "[t]he situation did improve dramatically [...] during the course of 1998. Albania's brand new Constitution of November 1998 provides clear foundation for judicial independence and the new law on Judicial Organization gives further legislative basis of this independence."<sup>18</sup> During the summer of 1997, the government resumed its collaboration with the CoE and EU. In January 1998, Albania signed an agreement with the European Commission and the CoE and began to implement the Action Plan for legal and judicial reforms. The European Commission's and CoE's assistance to Albania was coordinated by the Joint Programme, and the Albanian government committed itself to cooperation with the Programme. Since 1998, annual conferences have been held to assess progress with the Action Plan.

Important milestones of the institutional, legal, and judicial reforms during 1999-2001 included the establishment of the Office of Ombudsman, the State Advocate, the Office for the Budget of the Judicial System, and the State Office for Publications. *Kuvend* also passed a number of laws related to judicial reform such as the organic laws of the High Court, Constitutional Court, High Council of Justice, Ministry of Justice and the Office of the Bailiff. In the same wave, with the initiative of the Albanian government, *Kuvend* made some significant improvements to the Penal and Civil Codes in order to combat some newly emerging criminal activities in the economic sector as well as cybercrime and organized crime. The Standing Rules of the Minister of Justice for the Judicial Administration marked the beginning of reforms in judicial administration.

The years 1998-2001 was a period of successful and fruitful collaboration between domestic and foreign actors, and the coalescence of these actors' interests brought further progress. Judicial administration and judge's careers emerged as reform priorities. The government program for 2002 stated that "the judicial reform would also consist in drafting and approving of a precise system of recruitment, career, stipend and protection."<sup>19</sup> After 2001, however, especially after the 2001 PS-led coalition's victory through criticized elections, the country began to slip into a deep political crisis. The PS as well as other minor parties of the coalition became trapped in internal power struggles, and the ruling coalition lost its political initiative and vision. This crisis led to a cohabitation of government with organized crime, contraband, human smuggling and trafficking, and a galloping corruption.<sup>20</sup> It seemed as if the ruling coalition had already exhausted its energy during its first governing term, and the second term was plagued by reform fatigue. Not only did the coalition government lack political will to further reform the judiciary, but it also inhibited any effort in this area.<sup>21</sup> As a consequence, the Albanian judiciary, too, was corrupted, and recruiting judges involved in organized crime became routine.<sup>22</sup> Moreover, higher courts, abusing the already established judicial independence, played a negative role in the progress of judicial reform by blocking reforms in judicial administration and careers of judicial employees, as well as regulation of the distribution of judicial cases.<sup>23</sup>

The EU became aware of the Albanian government's lack of political will to carry out reforms. As the European Commission's 2004 Stabilization and Association Report

noted, although the Albanian government has continued to state that the country's progress towards the Stabilization and Association Process is a top priority, "its actions have not always supported this." The report also pointed out that many of the reforms needed to guarantee the proper implementation of SAPs have not been carried out, including "the fight against organized crime and corruption and the functioning of the judicial system."<sup>24</sup>

Yet another indicator of the judiciary's condition in that period was the inability to adjudicate government officials. As Freedom House noted, "[s]tatutes and courts granted [Albanian] government officials unacceptable privileges and special protections."<sup>25</sup> In the same vein, Human Rights Watch's report compiled a list of cases of the judicial system's reluctance to indict police officers with records of human rights violations, and pointed that the Albanian Human Rights Group's legal actions in defense of victims has met stonewalling by judicial authorities.<sup>26</sup> The evaluation of the Council of Europe regarding Albanian judicial reform during this time noted that:

The judicial system, which should play the most critical role in the fight against corruption and organised crime, is weak and ineffective. Its personnel is poorly paid and trained and seems to be at least partially corrupt. This also affects the enforcement of new laws, in particular with regard to serious crime.<sup>27</sup>

These remarks show that, despite the interest of the EU and its continuous pressure throughout Stabilization and Association negotiations to position the Albanian judiciary in the path of thorough reform, these efforts clashed with those of the Albanian government.<sup>28</sup> That brought a halt to many elements of the reform process, except for laws relating to the Serious Crimes Prosecutor's Office and the Court of Serious Crime for which EU pressure was especially firm.

With the change of power in Albania after 2005 national elections, the EU reiterated the same conditions regarding the short-term key priorities for judicial reform as it did four years earlier. The Council of the European Union demanded that the PD-led center-right coalition: (1) increase the transparency of the criminal and civil justice process; (2) guarantee that judges and prosecutors are appointed through competitive



examination; (3) foster the status, independence and constitutional protection of judges; and (4) establish a transparent and merit-based system for the evaluation of prosecutors.<sup>29</sup> However, the Resolution 1538 of PACE in 2007 implies that the progress of the new Albanian government toward judicial reform had not gone far beyond what was inherited from its predecessor.<sup>30</sup> Similarly, the EC's Albania 2005 Progress Report calls for caution when it notes that "[d]espite some positive developments, the proper implementation of the existing legislative framework and the overall effective functioning of the judicial system remain a matter of concern."<sup>31</sup>

The 2005-2007 period of PD rule was characterized by fervent efforts to depose the Prosecutor General and some of the members of the High Council of Justice. In both cases, the government considered the targeted officials to be linked with organized crime, while its opponents considered governments' efforts to remove them as an attempt to control the judiciary. In such a politicized atmosphere, the reform process stalled despite the intensive technical assistance offered by the European Assistance Mission to the Albanian Justice System (EURALIUS) to the Albanian Ministry of Justice starting in June 13, 2005.<sup>32</sup> As a result of ruling elites' lack of willingness to progress with judicial reform, some presidential decrees related to some parts of the reform, namely the reduction of district courts from 29 to 19, were pending with the President of the Republic. Another Decree, namely Decision 200/1, dated 18. 10. 2006, has been turned back from the High Council of Justice under the comments that "it should have been accompanied by a presentation of methodology and principles taken into consideration in drawing it up, as well as by a study and analysis of more concrete data collection."<sup>33</sup> Meanwhile, the Albanian press had been swift to criticize the Ministry of Justice for not having a strategy for its reorganization.<sup>34</sup>

In spite of incremental progress in the quality and transparency of the judicial during 2006, Albania's judicial system remained weak and corrupt. The right of full access by all citizens to the courts continued to be circumvented. The government sent to *Kuvend* a new draft Law on the Judicial which provided for the creation of administrative courts, transparent assignment of cases, and improvements in the career structure of judges. The new draft required that appointed judges be graduates of the School of Magistrates in order to increase professionalism among judges.<sup>35</sup> However, the draft

failed to address some other causes of the judiciary weaknesses, namely poor education and training of the judges, problematic pretrial detention systems, erratic implementation of court decisions, and perverted incentives for each actor in the judicial that undermine the rights of the defendant. For instance, the draft law failed to address the division of competences between the two inspectorates of the High Council of Justice and the Ministry of Justice. However, regarding disciplinary proceedings and the discharge of judges, the draft law has been considered an improvement over existing legislation. Specifically, it specified the criteria and procedures for appointing court chairmen and provided a list of their duties.<sup>36</sup>

The year 2006 can be remembered for the efforts of the judiciary to fend off political interference. The Constitutional Court ruled as unconstitutional the 2006 amendment to the Law on the High Court of Justice that required judges in the High Council of Justice to give up their judgeships in order to eliminate conflicts of interest.<sup>37</sup> The EC's Albania 2006 Progress Report referred to progress in transparency in judicial procedures through the publication of more judicial decisions and the results of checks on violation of the procedural code, as well as in the field of enforcement of final judicial decisions through the reorganization of the Bailiff Service and the upgrading of the level of its employees.<sup>38</sup> However, in spite of changes aimed at improving the independence and accountability of judges, appointment procedures and performance evaluations, unclear division of competences, slow judicial proceedings, and lack of transparency continued.<sup>39</sup> In addition, while the 2006 amendment to the Law on the High Council of Justice aimed to eliminate conflict of interest among members of the High Council of Justice, it failed to address other important issues facing the institution.<sup>40</sup>

Government policies of 2007 produced mixed results for Albanian judicial reforms. The amendment to the Law on Organization and Functioning of the Ministry of Justice in March 2007 reshuffled names and responsibilities among the departments but left several issues unaddressed. However, the most significant events during 2007 were the reorganization of district courts and the dismissal of Prosecutor General Theodhori Sollaku.<sup>41</sup>

The reorganization and reduction of district courts from a total of 29 to 21 was an effort to increase court efficiency and transparency. According to the National Strategy

for Development and Integration, reorganization of the courts should have increased both efficiency and transparency of trials and provided the necessary space and infrastructure within the courts. However, 24 judges, along with many administrative staff, lost their jobs during the reorganization process which raised serious constitutional problems due to the constitutional guarantees of the employment of judges.<sup>42</sup> The European Assistance Mission to the Albanian Justice System (EURALIUS) made recommendations concerning a three-step strategy for the organization of courts, but these guidelines were ignored by the Ministry of Justice.<sup>43</sup> Reportedly, in November 2007, just two months after the implementation of Albania's own reorganization project, workloads increased in central courts, efficiency was reduced, and costs increased owing to the frequent commuting of judges, secretaries, and case files.<sup>44</sup>

In October 2007, at the request of 28 parliamentarians from the ruling PD, a Parliamentary Investigation Commission was established with the intention of removing the Prosecutor General Theodhori Sollaku under accusations for being under the influence of the organized crime.<sup>45</sup> Then President Alfred Moisiu had fended off an earlier attempt to dismiss Sollaku, claiming that the *Kuvend's* decision lacked constitutional support. Asked by the Prosecutor General to rule on the constitutionality of the parliamentary investigation, the Constitutional Court ruled that "the Parliament has no competence to check and evaluate the decision of the prosecutors in concrete cases."<sup>46</sup> However, PD's efforts to remove Sollaku revived after Bamir Topi, the previous leader of PD's parliamentary faction was elected president in July 2007. Although the opposition boycotted the Commission, on November 5<sup>th</sup>, *Kuvend* voted in favor of dismissing the Prosecutor General. Spartak Ngjela, a parliamentarian and former ally of Premier Berisha, stated that "[th]e dismissal of the prosecutor general is an attempt of the prime minister to control independent institutions."<sup>47</sup> On November 22<sup>nd</sup>, President Topi decreed that the *Kuvend's* decision to dismiss Sollaku was valid. Soon after, *Kuvend* approved Ina Rama as the new Prosecutor General at request of the president.<sup>48</sup>

The 2008 American Bar Association's Judicial Reform Index (JRI) for Albania noted that "that the pace of judicial reform, with the aim of encouraging the functioning of an independent, transparent, impartial, efficient, and professional judicial, is slow."<sup>49</sup> As the Report went on, "certain actions by political and judicial bodies over the last two

years [were] perceived as political interference in the independence of the judicial and a dogged perception by the majority of citizens that the judicial is corrupt.”<sup>50</sup> Meanwhile the European Commission’s Albania Progress Report 2007 noted that

Overall, there have been some steps to improve the efficiency of the judicial. However, it has continued to function poorly due to due to shortfalls in independence, transparency and efficiency. Legislation planned to address these issues is delayed.<sup>51</sup>

The approval by the *Kuvend* in February 2008 of the long pending revised Law on Organization and Functioning of the Judicial, which created the foundation for an objective, merit-driven appointment and evaluation system for judges, renewed hopes for change. The Law on Organization and Functioning of the Judicial and the Law on the Office of the General Prosecutor as well as the establishment of the parliamentary Subcommittee on Judicial Reform and the parliamentary Committee of Laws, Public Administration and Human Rights passed due to a surprising cross-party consensus in the *Kuvend* at the beginning of 2008.<sup>52</sup> However, obviously, the Law opened a window for the executive branch to control some appointments in courts. Specifically, the Law leaves the appointment of the Court Chancellor in the hands of the Minister of Justice. Moreover, the Law gave the court chancellor an important role in the appointment and removal of the judicial administration. Six months after the Law on Organization and Functioning of the Judicial entered into force, *Shoqata Kombëtare e Gjyqtarëve të Shqipërisë* (ShKGj) [National Association of Judges of Albania] challenged the Law in the Constitutional Court for violating the independence of the judiciary.<sup>53</sup> In 2009, the Constitutional Court pronounced unconstitutional the duty of the Chancellor to appoint the judicial administration. However, the government’s attempt to involve Court Chancellors in appointments and removals of judicial administration as well as the draft Law on Judicial Administration that the government sent during the same year to the *Kuvend*, strengthened executive control over the judiciary. Moreover, the Law on Organization and Functioning of the Judicial failed to address the division of responsibilities between the two inspectorates of the High Council of Justice and the Ministry of Justice.<sup>54</sup> These

efforts clearly show that, in that period, the interest of the Albanian ruling elites toward an independent judiciary were negative, and the PD was interested in controlling the it.

A new Law on Amendments to the Law on the Office of the General Prosecutor became another point of contention between the Office of the General Prosecutor and the government. The draft amendments completed in September 2008 by the Ministry of Justice were contested by the Association of Prosecutors as well as the General Prosecutor Ina Rama. They saw the amendments as a way to increase the executive's control over prosecutors, and allow the suspension of the General Prosecutor as well as the reduction of prosecutors' salaries. The amendments were perceived as measures for interfering in judiciary's independence. Criticism from international partners assisting the Albanian judicial reform compelled the Ministry of Justice to involve the Office of the General Prosecutor in consultations. As a result, a new Law on the Office of the General Prosecutor was adopted by the *Kuvend* on December 29, 2008.<sup>55</sup>

The government's efforts to encroach upon the independence of the judiciary continued to be the most distinct feature of Albanian judicial reform in the 2007-2010 period, clear evidence of government's negative interests in judicial reform. In 2009, the government tried again to target judges and prosecutors through a lustration law. Passed by *Kuvend* in December 2008, the new Law on Lustration foresaw the removal of judges and prosecutors who served during the communist regime. Although the implementation of the Law on Lustration was suspended by the Constitutional Court, the debate around it affected the judicial proceedings against former Minister of Defense and current Minister of Environment, Fatmir Mediu, and other high officials accused of involvement in the 2008 explosion of the Gërdec ammunition plant in which 26 people died. The Chief Prosecutor of the case, Zamir Shtylla, was personally attacked in the media by Premier Berisha for alleged criminal involvement in the political persecution of citizens by the former communist regime. Shtylla resigned soon after the Law on Lustration was adopted. The case against Mediu was later dismissed by the High Court in September 2009 on grounds that his immunity had been reinstated with his election to the Parliament.<sup>56</sup> In another instance of judicial malfunctioning due to intrusions from politics, the Minister of Interior Lulzim Basha was accused by the Office of the General Prosecutor for abuse of office during his service as Minister of Public Transportation and

Telecommunication. The trial against Basha involved courts at three levels, and was adjudicated in two parallel lines before the District Court of Tirana. Both cases ended up before the High Court, which issued two different decisions by different criminal panels. According to the Constitution, criminal proceedings against persons with immunity must be dealt with by the High Court, which finally dismissed the case as a result of the contradictory decisions.<sup>57</sup> In both cases, the government openly took stances in favor of its ministers with the Prime Minister himself personally attacking the prosecutors of the cases.

As the European Commission's Albania 2008 Progress Report concluded, there has been limited progress in [the Albanian] judicial reform, mainly on the legal framework. However, the justice system continues to function poorly due to shortcomings in independence, accountability and transparency.<sup>58</sup>

One of the major problems of the Albanian judicial system is the gap between court decisions and their implementation. Although the number of implemented decisions in Albania increased in 2009, the number of unimplemented decisions was much higher (5,806 to 8,057, respectively, according to the Annual Statistics Report of the Ministry of Justice). State institutions continue to fail to enforce court rulings. In many cases, state institutions blame their failure to execute court decisions on budget shortfalls. The Constitutional Court decided in January 2009 that the failure of the Bailiff's Office to enforce decisions is considered a violation of the Constitution. A new Law on Private Bailiffs, adopted in 2009, aimed to liberalize the enforcement services and thereby increase competitiveness while reducing corruption, but its implementation has been slow. Other secondary legislation for the implementation of the law has yet to be adopted and enforcement fees are still under negotiation. In the meantime, an increasing number of complaints (up to 200 in 2009) over the state's failure to execute court decisions have been submitted to the European Court of Human Rights. These unexecuted decisions are often related to property issues and illegal discharges from the civil service.<sup>59</sup>

After almost two decades of transition to democracy, Albania still lacks a comprehensive strategy for judicial reform. As a result, the *Kuvend* could not adopt the

draft Law on Establishment of Administrative Courts and Administrative Dispute submitted by the government at the end of 2008, which would have established specialized administrative courts and faster judicial procedures for adjudication. The Administrative Courts Bill is expected to establish seven courts that would adjudicate disputes of citizens and businesses on matters such as employment, tax, customs, pensions, property registration, and compensation of property, as well as other important issues. These courts would further align Albania's judicial system with required EU integration standards.<sup>60</sup> The business community supported the adoption of the law, considering it an important step toward shortening judicial administrative processes. A draft law introduced in April 2009 on judicial administration was strongly opposed by judicial representatives as an attempt by the executive to exercise judicial power.<sup>61</sup> The EC's Albania 2009 Progress Report considers the Albanian judicial reform to be "at an early stage" and that it "continues to function poorly due to shortcomings in independence, transparency and efficiency."<sup>62</sup>

In a press release on September 27, 2010, the Embassy of the United States of America urged "the passage of the draft law 'On Adjudication of Administrative Disputes and the Organization of Administrative Justice,' known as the Administrative Courts Bill." The Administrative Courts bill is one of six components of the Millennium Challenge Corporation Threshold Program II - Albania, which was signed in September 2008. The press release warned that, "[i]n order to complete planned activities with U.S. funding, the law must be passed by September 30, 2010."<sup>63</sup> The adoption of the Administrative Courts Bill required a qualified majority of 2/3, and the PS had conditioned its vote for the bill with the opening of an investigation on the 2009 general elections.<sup>64</sup> In addition, the PS' Chairman, Rama, has declared that Albania's international partners have objected to one-third of the draft.<sup>65</sup> Rama's position did not change even when Director of Threshold Programs for the Millennium Challenge Corporation, Bruce Kay, revealed that Albania could still qualify for the fund to assist with the establishment of the administrative courts if *Kuvend* passed the Administrative Courts Bill before January 2011.<sup>66</sup> The conclusions of the EC's 2010 Progress Report recognized the lack of substantial progress in judicial reforms and emphasized the need

for a comprehensive reform strategy for the judiciary, reinstating that “[a]ttempts by the executive to limit the independence of the judicial remain a serious concern.”<sup>67</sup>

Table 6-1 consists of the Freedom House’s score in Albanian judicial framework and independence, and Table 6-2 comprises the ABA-CEELI judicial reform index.<sup>68</sup> Ranging from 1 to 7, the Freedom House’s score reflects the nation’s level of judicial framework and independence with 1 denoting the highest possible level of independence and 7 denoting its total absence.<sup>69</sup>

TABLE 6.1 ALBANIAN JUDICIAL FRAMEWORK AND INDEPENDENCE

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
4.50	4.50	4.25	4.25	4.50	4.25	4.00	4.00	4.25	4.25

Source: Freedom House

Note: The years reflect the period of the Report, which is an assessment of the previous year’s developments.

The scores provided by the Freedom House reports in Table 6-1 are consistent with my account. It shows both the improvement of the score with the return of PD to power and the reform reversal of the last years. The interpretation of Table 6-2 offers a more optimistic view of the Albanian judicial reform: mapping out the trend from 2001 to 2008 reveals that nine of the factors have experienced an increase, three factors have gone down, and eighteen factors have remained about the same. These results can be interpreted as a slight improvement in the state of the judiciary in the country. However, both reports bear incompatibilities with each other and my account. However, I think that reaching conclusion based on EC Progress Reports, at least for the most recent years, brings a better evaluation of the reforms progress which, arguable, is highly influenced by EU membership conditionality. The following subsections gives a more detailed account of the role that EU and Albanian leaders’ interests in the judicial reform.



TABLE 6.2 ALBANIAN JUDICIAL REFORM INDEX: TABLE OF FACTOR CORRELATION

		2001	2004	Trend	2006	Trend	2008	Trend
<b>I. Quality, Education, and Diversity</b>								
Factor 1	Judicial Qualification and Preparation	Neutral	Neutral	↔	Positive	↑	Positive	↔
Factor 2	Selection/Appointment Process	Positive	Positive	↔	Neutral	↓	Neutral	↔
Factor 3	Continuing Legal Education	Negative	Neutral	↑	Positive	↑	Positive	↔
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
<b>II. Judicial Powers</b>								
Factor 5	Judicial Review of Legislation	Positive	Neutral	↓	Neutral	↔	Neutral	↔
Factor 6	Judicial Oversight of Administrative Practices	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Positive	↔	Positive	↔	Positive	↔
Factor 8	System of Appellate Review	Positive	Positive	↔	Positive	↔	Positive	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔	Negative	↔	Negative	↔
<b>III. Financial Resources</b>								
Factor 10	Budgetary Input	Positive	Positive	↔	Positive	↔	Positive	↔
Factor 11	Adequacy of Judicial Salaries	Negative	Neutral	↑	Neutral	↔	Neutral	↔
Factor 12	Judicial Buildings	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 13	Judicial Security	Negative	Negative	↔	Neutral	↑	Neutral	↔
<b>IV. Structural Safeguard</b>								
Factor 14	Guaranteed Tenure	Positive	Positive	↔	Positive	↔	Neutral	↓
Factor 15	Objective Judicial Advancement Criteria	Negative	Negative	↔	Negative	↔	Neutral	↑
Factor 16	Judicial Immunity for Official Actions	Positive	Neutral	↓	Positive	↑	Positive	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 18	Case Assignment	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 19	Judicial Associations	Neutral	Negative	↓	Neutral	↑	Positive	
<b>V. Accountability and Transparency</b>								
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔	Negative	↔	Negative	↔
Factor 21	Code of Ethics	Negative	Negative	↔	Neutral	↑	Neutral	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Negative	Negative	↔	Negative	↔	Negative	↔
Factor 24	Publication of Judicial Decisions	Negative	Negative	↔	Neutral	↑	Negative	
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑	Neutral	↔	Neutral	↔
<b>VI. Efficiency</b>								
Factor 26	Court Support Staff	Negative	Neutral	↑	Neutral	↔	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔	Neutral	↔	Neutral	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑	Neutral	↔	Neutral	↔
Factor 30	Distribution and Indexing of Current Law	Neutral	Neutral	↔	Neutral	↔	Neutral	↔

Source: ABA-CEELI. Albanian Judicial Reform Index, Volume I (2001), Volume II (2004), Volume III (2006), Volume IV(2008).

### *A consociationalist interpretation of the Albanian judicial reform*

Hence, when it comes to EEC's judicial reforms, it is expected that EU carrot-and-stick policies will be more powerful and hence successful than in other policy sectors. In the case of Albania, carrots included €21 million from the Community Assistance for Reconstruction, Development and Stabilization (CARDS) program for the judicial reform during the 2002-2004 period as well as the establishment of EURALIUS, June 13, 2005-June 30, 2010.<sup>70</sup> In the European Commission's annual Country Progress Report, the Judicial Reform rubric within the Democracy and the Rule of Law subsection, Political Criteria Section, meticulously describes recent developments in judicial reforms, assesses progress, and provides recommendations on the expected directions of the reform for the near future. The goal remained the establishment of a judicial system in Albania compatible with the EU member countries' systems, hence a guarantee for the consociational practices that have created and ensured that the EU remained a stable democracy.

### *A sectorial contextual interpretation of the Albanian judicial reform*

The previous section clarifies that throughout the entire period 1991-2010, the EC/EU gave high priority to the Albanian judicial reform. First, the consociationalist interpretation of Albanian judicial reform revealed the EU's positive interests in helping to establish a stable democracy in Albania that would emerge as a unified pillar in negotiations and absorption of EU consociational practices during the nation's accession process and after potential EU membership. Second, short of EU membership, the EU has seen the establishment and consolidation of independent, impartial, competent and efficient judicial systems in its neighboring countries from a security perspective. An independent and efficient judicial is able to fight organized crime even if such illegal activity has political support, as often is the case in the Balkans. Fighting organized crime, illegal immigration, gun and drugs smuggling, and human smuggling and trafficking from the Balkans to the territories of the EU member countries represent efforts to increase security and democratic stability within the existing EU, and these issues affects other areas beyond enlargement policies such as Justice and Home Affairs and EU Common Foreign and Security Policy.<sup>71</sup> Third, as a human rights issue, a strong,

independent and efficient judicial system would help resolve domestic human rights issues, especially those related to economic rights and minority rights, thus reducing the potential of EU membership aspiring countries to become both economically and politically unstable. Indeed, the EU shares the latter perspective with the CoE, which also explains the willingness of the EU to heed the CoE comments and recommendation about judicial reform progress in the Balkans and also cooperate in joint programs.

During the period of “extraordinary politics,” 1991-1992, Albanian leaders’ supported judicial reform. The judicial was utterly unfit to deal with the new political and economic conditions of the country, and was unable to guarantee and enforce trade contracts or settle disputes between individuals and between persons and the state. Presumably, any reform in other institutional and policy arenas including economic reform would have been impossible without some substantial changes in judicial practices. However, the Albanian leaders’ interests to institute judicial reform tempered as “ordinary politics” ensued. During that period, judicial reform stalled in this period, reflecting PD’s growing authoritarianism. The failure of the referendum on the Constitution in November 1994, the growing international pressure on the government, and the need for the government to score some international achievements (mainly membership in the Council of Europe) resulted in government’s positive interests in judicial reform during 1995. After the country’s membership in the CE in June 1995, the PD was no longer interested in reforms that would erode its control of the judicial. Moreover, due to the rigged elections of May 1996 and the ensuing political crisis during 1996-1997, Albanian leaders lost any immediate interests in judicial reform in favor of other emerging priorities.

With the victory of the PS-led Center-Left coalition in July 1997, the new leaders showed positive interests for reforms in general and the judicial reform in particular, in order to show domestic and international audiences that they were different than their predecessors. Such a political spirit was reflected in decisive, fast, and comprehensive reforms, including judicial reform, in the period of 1997-2001. However, the same leaders, after the PS sunk into a deep political crisis due to an internal power struggle during 2002-2005 and entire segments of the PS leadership became embedded in occult

alliances with domestic and international organized crime, abandoned their positive interests toward judicial reform, thus once again causing a reform stalemate.

In 2005, PD returned to power with a rehabilitated image. Such a spirit of change led the government toward improvements in the judicial sector as reflected by the Freedom House's Judicial Framework and Independence score improvement from 4.50 to 4.25 in 2006 (reflecting developments during the previous year). As the Freedom House's Nations in the Transit Report notes, the drop of the score from 4.25 to 4.00 in 2006—reflected in the Freedom House Report of 2007—owed to the judiciary's attempts to resist interference by the ruling majority.<sup>72</sup> However, the very fact that the judicial possessed means to resist government's intrusions shows progress in the judicial system. The American Bar Association's Judicial Reform Index for Albania, 2006, also leads to an interpretation of a small progress in judicial reform.<sup>73</sup>

The continuous PD struggle against the Office of the General Prosecutor shows the PD's return to its original ruling style: control of the judicial to serve its political agenda. A small improvement in the Freedom House score during the period of 2006-2007 (4.00 for Reports 2007 and 2008 each) mainly showed the judiciary's efforts to resist politics, not the progress of reform itself. Indeed, the very struggle of the judicial to resist politics showed that, by then, the Albanian judicial had built some independence as well as institutional tools to defend themselves. And finally, in the 2008-2010 period, government's interests toward judicial reform turned negative as the PD to date perceives its control over the judicial system as a means to retain power.

Table 6-3 tabulates the reform results as correlated with EU's and Albanian ruling elites' interests over the last two decades.

### **Macedonian Judicial Reform**

During the early years of its independence, Macedonia did not make any efforts to reform its judicial system. Sovereignty There is no evidence of serious attempt by any international partner of Macedonia to assist the country in reforming its judicial system during the early 1990s. Some efforts were made in 1995 by the OSCE and the American Bar Association's Central and East European Law Initiative (ABA-CEELI) to invite lawyers to form a local NGO to represent criminal defendants pro bono, a responsibility

TABLE 6.3 DEVELOPMENTS IN ALBANIAN JUDICIAL REFORM

REFORM	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1991-1992		0	+	<b>Good progress.</b> The amendments to the Major Constitutional Provisions created an opportunity for successful continuation of the judicial reform
1993-1994		+	–	<b>No reform.</b> Government's interests shifted toward the control of the judicial. The most important "policy" of that period became the replacement of the judges who have served during the communist era with PD activists who have been trained in some 6-month courses.
1995-1997		+	0	<b>Slow progress.</b> The implementation of the new Penal Code and Penal Procedure Code were good signs of progress. However, these successes were tarnished by government's attempts to control the courts, especially the High Court. The political instability of the 1996-1997 period brought the judicial reform to a total halt.
1998-2001		+	+	<b>Excellent progress.</b> The implementation of the Constitution and the establishment and/or reformation of several services represented a major breakthrough for Albanian judicial reform.
2002-2005		+	0	<b>No reform.</b> The crisis within the PS and ruling coalition shifted policy interest to other priorities. The only notable (rather political) judicial act of this period is the abolition of the death penalty by the Constitutional Court in 2002.
2006		+	+	<b>Good progress.</b> The progress in judicial reform following the PD's return to power came as a combination of the EU's positive interests and the PD's need to show that it had abandoned its authoritarian style.
2007-2010		+	–	<b>Reform halts/reverses.</b> The PD's increasing interest in winning a second term and controlling the Office of the Prosecutor as well as the High Council of Justice brought the reforms to a standstill, and even reversed it in some aspects.

the Macedonian state itself had failed to fulfill. However, these efforts failed owing to skepticism and a lack of a culture of volunteerism in the country.<sup>74</sup> Overall, during the 1991-1995 period, Macedonian elites' interests in reforming the judicial system were neutral.

The Dayton Agreement, November 1995, alleviated Macedonia's fears about its existence and offered the government an opportunity to focus on reforms that would deepen democratization and improve governance efficiency. As in the case of local decentralization, Macedonian ruling elites developed positive interests toward judicial reform. Thus, in 1995 Macedonia undertook its first steps toward reforming its judicial system with the Law on Courts, essentially eliminating specialized courts. Prior to 1996, there were courts in Bitola, Skopje, and Štip that handled commercial cases. There were also labor courts and courts that tried less serious criminal offenses, but the new law brought those cases in district courts.<sup>75</sup> *Sobranie* passed a brand new Criminal Code in 1996, thus replacing the old Yugoslav code which had remained in use even after the country's independence in 1991. *Sobranie* also passed a brand new Code of Criminal Procedure in 1997.<sup>76</sup>

Some analyses of the current status of the Macedonian judiciary overestimate the role of the Ohrid Agreement in country's judicial reform.<sup>77</sup> Indeed, the Agreement's signatories were concerned mainly with ethnic ratios as criteria for selecting the Constitutional Court, Ombudsman and the Judicial Council (Paragraph 4.3), and the right to translation at the state expense for all proceedings and documents for accused persons at any level in criminal and civil judicial proceedings (Paragraph 6.7). Albanian elites perceived the Macedonian judicial system as an instrument of the Macedonians, not of the state. In turn, Macedonian elites took advantage of Albanians' lack of attention to judicial reform and tried to retain as much power as possible over the judiciary. It is no coincidence then, that domestic and international were focused mostly on restoring stability in the country through the EU and other international partners. They thereby only emphasized issues contested by the Albanians in order not to jeopardize the negotiations.

The period from the signing of the Ohrid Agreement until the September 2002 elections was a difficult period for most reforms in Macedonia, including judicial reform, since the VMRO-DPMNE had been resisting the implementation of the Ohrid

Agreement. The entire pre-electoral and electoral rhetoric of its Chairman and country's Premier, Ljubče Georgievski, was rife with dissent and revulsion against "Albanian terrorists" and the international actors who have brokered the Agreement. VMRO-DPMNE needed to cling to its image as tough on issues of national security and protection of the *Macedonianess* of the state.

During September 2001-September 2002, Macedonia's rule of law and its guarantor, the judicial system, continued to be sabotaged by politics and its preferred instrument, the police. The Macedonian Helsinki Committee reported the unprofessional behavior of the police force. Moreover, its elite units of Lions and Tigers were recorded assailing workers, "opposition" journalists and media personnel, political activists, and random civilians as well as threatening opposition politicians.<sup>78</sup> Police trespassing often went unpunished, and so have gone the criminal activities of the Minister of Interior, Ljube Boškovski.<sup>79</sup> In fact, after Interior Minister Boškovski personally injured four spectators at a Lions' military exercise in May, Prime Minister Georgievski pronounced that, irrespective of what the interior minister might do, he would be amnestied "for past merit in service of the state." As summarized by the Macedonian Helsinki Committee, police behavior, especially during the pre-election period, undermined the reputation and role of the Ministry of the Interior and the professional cadre of the police... [making it] difficult to distinguish whether undertaken actions are part of legally defined functions of the police or are party orders."<sup>80</sup>

The situation changed after Cervenkovski's SDSM victory in the September 2002 elections. The SDSM-BDI coalition had strong incentives to institute reforms. First, the SDSM returned to power with the ambition to be a leading force for Macedonian democratization and a credible domestic partner for international actors. The task of BDI, the Albanian partner of the government, was also complex. First, being founded in spring 2002 by people mainly related to the UÇK, and led by UÇK's political leader Ali Ahmeti, BDI needed to demonstrate its commitment to the stability of Macedonia. Second, its leader needed to demonstrate that the party was comprised of politicians and statespersons and not simply guerrilla fighters. Third, they needed to pay off much of their fighters who felt that they did not gain anything from the rebellion, and also protect them from harassment and/or persecution from the predominantly Macedonian security

forces and law enforcement. In sum, in the aftermath of the Ohrid Agreement, due to positive interests of both domestic elites and the EU, improvements occurred greater than those stipulated in Ohrid. Reportedly, changes during the period 2002-2004 (1) introduced a new political system at both national and local levels; (2) provided for an equitable legal representation of ethnic minorities; (3) provided for the use of minority languages; and (4) introduced the institution of the ombudsman.<sup>81</sup>

International influences on decision making have been able to help Macedonia to overcome its political fragmentation. In those cases, Macedonian politicians have demonstrated a willingness to surmount partisan and ethnic divisions by adopting key laws. Many legislative reforms regarding money laundering, drug enforcement, wiretapping, and citizenship have been mandated through Macedonia's commitment to the Stabilization and Association Agreement process with the EU. Additionally, national security pressures and the need to implement the Ohrid Agreement have dictated the smooth adoption of changes in the criminal code, including the voluntary handover of weapons. Likewise, deputies almost unanimously have ratified a number of international human rights agreements, such as the Convention for Elimination of all Forms of Discrimination of Women, the Convention on Children's Rights, and agreements banning child prostitution and pornography.<sup>82</sup>

However, the SDSM-BDI coalition had its own preferences related to the judicial reform, as illustrated by the power struggle in 2003 among the ruling SDSM, the opposition VMRO-DPMNE and President Trajkovski. SDSM's lack of an absolute majority during this period had hampered its efforts to build consensus for policies and reforms. In 2003, SDSM failed in its first attempt to garner support for amendments to the Law of Executive Procedure and the Law on Courts. In addition, the SDSM appointee to the Chair of the Republican Judicial Council, Lenče Sofronievska, was rejected by the VMRO-DPMNE parliamentarians claiming that she was an SDSM partisan appointment. At the same time, the parliamentary majority firmly turned down the two nominations of President Trajkovski.<sup>83</sup>

When in 2004 the Minister of Justice Ixhet Memeti acknowledged publicly that the judicial system required thorough restructuring, it reflected a growing awareness by the government that patchwork legislation would never result in thorough judicial review.



In April, Memeti announced that his team was working on a package of constitutional and legislative amendments. Those amendments aimed at redefining the position of judicial power within the country's political system, establishing a system for justice appointments, and reinforcing the independence of the judicial by setting up a separate judicial budget. Legislative changes aimed at increasing adjudication speed, defining certain provisions of the criminal code, and amending the entire judicial process.<sup>84</sup> Memeti also announced plans to abandon the practice of appointing judges through judicial exams and strengthening the administrative capacity of the judicial by introducing a new system of recruiting, training, evaluating, and promoting judges.<sup>85</sup>

In November 2004, the government adopted a strategy and Action Plan on Judicial Reform, outlining key changes to the country's legislation and constitution. The main principles were approved by the *Sobranie* on May 18, 2005 by a broad majority. Draft amendments were presented by the government in June, and in August the *Sobranie* adopted 15 amendments after public debate. Meanwhile, a new Law on Enforcement of Civil Judgments was adopted in May 2005 to abolish the separate motion required for execution of judgments as well as to create a privatized bailiff system under the Ministry of Justice. A new Law on Civil Procedure was also adopted in September 2005 to introduce changes to make court procedures more efficient.<sup>86</sup> Also during the same year, the government discussed reforms to the Judicial Council's system for electing members in order to limit political interference. An expert committee has already been hired and later dismissed during that process.<sup>87</sup>

In a flurry of activity, on December 7, 2005, the *Sobranie* passed ten constitutional amendments related to judicial reform. These concerned the Office of the Public Prosecutor (Amendment 30), the election of 15 members of the Judicial Council (Amendment 38), and the equitable and just representation of citizens of all ethnicities as judges, lay judges, and presidents of the courts (Amendment 29). The *Sobranie* also passed legislation on the enforcement of the amendments specifying that by July 30, 2006, new laws on the Judicial Council, the courts, misdemeanors, the Council of Public Prosecutors, and the Public Prosecutor should be passed.<sup>88</sup>

In February 2006, a law was passed establishing the Academy for Training of Judges and Prosecutors, and in November the EU announced a €1.1 million (US\$1.5

million) project to fuel the academy to enhance the professional skills of the country's judiciary. Candidates for the basic courts would have to complete a training course at the new academy. Also, the Law on Mediation was adopted in May with hopes to reduce the backlog of unsolved cases. Sixty mediators were appointed, and the law entered into force on November 2006. In May, new legislation on the courts, the Judicial Council, misdemeanors, and administrative disputes was passed, although the Law on the Judicial Council was the only one to enter into force in 2006.

Despite these reform efforts, inefficiency problem persisted as hundreds of thousands of cases were untried. The courts were burdened with administrative work, a high number of misdemeanor cases, and decisions requiring execution. Out of five judgments against Macedonia by the European Court of Human Rights in 2006, four noted violations related to the length of judicial proceedings. While in March 2005 the total number of pending cases was 730,700, in 2006 the number was 937,756.<sup>34</sup> In the Bitola Basic Court, there were 69,000 unsolved cases and only 40,000 solved in 2006. During the same time period, there were 44,000 unsolved cases in the Tetovo Basic Court and 43,649 in the Ohrid Basic Court. At the Kičevo Basic Court, there was no air conditioning, and work during the summer months was difficult. This court also lacked computers and courtrooms ; there were only five courtrooms for a total of 17 judges. The court in Kavadarci was heavily in debt, owing 1.2 million denars (€200,000 or US\$273,280) to the newspaper *Makedonski Poshti*. The Gostivar Basic Court also had a debt of approximately 1.5 million denars, while the Ohrid Basic Court lacked an archive.<sup>89</sup>

The elections of July 2006 resulted in a return of the VMRO-PDSH coalition to power. This time around, the coalition was interested in portraying its governing style in a positive manner. With the former Chairman and Premier Lubče Georgievski gone, the new coalition under the leadership of Nikola Gruevski renewed commitment to judicial reforms. The process began in October 2006 when the government abruptly dismissed the former public prosecutor, Aleksandar Prčevski, two years before his mandate ended, criticizing him for inefficiency and unprofessional behavior. With this move, the coalition exploited an institutional gap. The 2005 constitutional changes had placed the decision to dismiss prosecutors in the hands of a newly designed independent body, the Council of Public Prosecutors. However, by fall 2006, the Council has not yet been set up owing to

delays. The new government sacked Prčevski using the old laws and cited alleged “unprofessional work and poor results.” Yet, the legality of the dismissal was questioned, prompting experts to speculate that his removal was politically motivated and inconsistent with due procedures.<sup>90</sup>

An enthusiastic European Commission’s Progress Report 2006 noted that “[t]he legal framework for strengthening the independence and the efficiency of the judicial is largely in place,” supported by “a broad political consensus.”<sup>91</sup> As the EC’s Report assessed Macedonia’s progress

Overall, the constitutional and legal framework for an independent and efficient judicial is now largely in place. However, most of the reforms in the judicial have not yet entered into force. There are important challenges in this field, which require a sustained programme of reforms.<sup>92</sup>

Progress in judicial reform continued in 2007 with around 55 laws related to the judicial system reportedly adopted, in accord with recommendations of the Council of Europe and the EU. However, a loud public debate erupted among domestic experts over the interference of political parties in the composition of the Judicial Council as well as the nomination of judges. The new Judicial Council began operating in January 2007 and it began to recruit judges to the new Administrative Court and Court of Appeals in Gostivar. However, the new Administrative Court, which became legally able to adjudicate administrative cases in May 2007, was still not functional as of this date since its judges were not yet appointed. Other steps forward in Macedonian judicial reform within 2007 were the adoption in December 2007 of the Law on Public Prosecution and the Law on the Council of Public Prosecutors—the two final laws needed to complete the legislative framework set out in the constitutional amendments of December 2005. Also, the Academy of Judges and Prosecutors was established and became operational. The 2006 Law on Mediation, which aimed to lower court workloads via alternative dispute resolution, was also enacted.

2007 was the final year of the SDSM-BDI coalition. Apparently, the approaching general elections drove all parties to a politics of identity strategy. This rising tide of ethnic tensions during that year affected the judicial system as well. In October, the

Constitutional Court ruled on the constitutionality of the 2005 Law on the Use of Cultural Symbols by Ethnic Communities. The ruling found unconstitutional articles that regulated the public display of flags by ethnic communities. The ruling was strongly condemned by ethnic Albanian parties, with the governing PDSH accusing the opposition BDI of influencing members of the Court. Similar accusations were made by BDI. Three days later, the president of the Constitutional Court and another ethnic Albanian judge resigned in protest over the decision.<sup>93</sup> This shift of strategy from conducting reforms to promoting identity politics caused a reversal of the judicial reform process and was reflected by a worsening of the Freedom House's score of Judicial Framework and Independence from 3.75 to 4.00. However, the EC's 2007 Progress Report neither praised any progress nor criticized the setback.<sup>94</sup>

Political and ethnic tensions rose again in the aftermath of the July 2008 elections when VMRO-DPMNE hesitated to invite BDI to serve as a governing partner, preferring its rival PDSH. However, the VMRO-DPMNE finally accepted to sit at the table in spring 2008 and negotiate an agreement with BDI on a few issues which the Albanian party's leadership claimed to pertain to the implementation of the Ohrid Agreement.<sup>95</sup> As Ragaru (2007) notes, Macedonia had once again lost several precious months in implementing much needed judicial reforms as well as those pertaining to state administration, education, and the economy.

Once in power, Premier Gruevski's image changed from a technocrat to a Macedonian nationalist. He has tried to build his political success on a discourse that aptly combines promises to make Macedonia a prosperous country, with boosting of ethnic Macedonian self-confidence. It has worked thus far among Macedonians as they have felt themselves to be major losers in the Ohrid process (Ragaru 2008).

Ethnic tensions continued to simmer for the rest of the VMRO-DPMNE rule, as Gruevski continued to focus on ethnic politics as a means of boosting political support. The small steps previously taken to advance judicial reform had proven insufficient to significantly improve the state of the nation's judiciary. However, the courts strengthened gradually due to the fact that reforms in this sector began earlier, in 2005, and because the Constitutional Court, with members appointed by the *Sobranie* using the "double majority" rule, had the power to annul legislation and decrees that were found to violate

the Constitution. The Judicial Council, also appointed through a parliamentary double majority, oversees the court system and judges. In 2008, the new Administrative Court and the new Court of Appeals of Gostivar began operating. The Law on Courts was amended to provide for just one (instead of five) specialized court department to deal with cases of organized crime and corruption. The Judicial Council maintained its efforts to combat corruption in the judicial.<sup>96</sup>

The European Commission assessed Macedonian progress in judicial reform during the year 2008 as follows:

Overall, good progress has been made in implementing the strategy on judicial reform, a key priority of the Accession Partnership. The judicial council functions smoothly and the New Council of Public Prosecutors has started to meet. The new Administrative Court and the new Court of Appeal in Gostivar were set up. However further strengthening of the judicial is required as regards its independence, efficiency, human resources and budgetary framework. A track record of implementation of the new legislative framework has still to be established. In the area of the judicial the country is moderately advanced.<sup>97</sup>

In 2009 there were allegations that the government had created a blacklist of judges, meddling in judiciary. In April, VMRO–DPMNE questioned the legitimacy of the Constitutional Court which had ruled against the introduction of religious education into state schools. The party described the decision of the court as politically motivated, claiming that the leader of the SDSM controls the court’s work.<sup>98</sup> The Constitutional Court responded with a press release denouncing “unprecedented pressure” and “attempts to harm its reputation”.<sup>99</sup> However, finally, the Speaker of the *Sobranie*, Trajko Veljanovski, a member of VMRO–DPMNE, announced that the decisions of the Constitutional Court were final and that the *Sobranie* should respect them. The Constitutional Court responded that Veljanovski simply sought to discredit and apply pressure to the court. In addition, Sterjo Zikov, a discharged Skopje Public Prosecutor,

claimed that his dismissal was a political decision. Similar complaints were voiced by two other prosecutors, Dragan Gaždov and Mitko Mitrevski, who were not reappointed.<sup>100</sup>

A survey conducted in 2009 by the OSCE Spillover Monitor Mission reflects those concerns regarding the independence of the judiciary. As the conclusions of the report noted:

The results show that attempts to influence the decisions of judges are a common practice and occur frequently. Common violations of the law and of the principle of independence of the judicial remain to a large extent unnoticed and unpunished. A considerable portion of the judges think that these attempts do have an influence on the administration of justice.

The mechanisms and instruments to protect their independence are perceived by judges as ineffective and therefore are very rarely used. The conducted survey reveals a large degree of distrust in judicial institutions and mechanisms of the judicial system on the part of the judges. An overwhelming majority of judges views the Judicial Council, probably the most important body for the independence of the judicial, as biased and the procedures it conducts as nontransparent and politically influenced.

Many judges are dissatisfied with their working conditions, their salaries and their possibilities for professional development. The high response rate to the questionnaire demonstrates that judges believe it is time to engage into discussion of this issue and initiate improvements.<sup>101</sup>

The EC Communication on Macedonia Progress Report, 2009, refers to the country's progress on judicial reform in almost neutral language. The report notes that

“further progress was made on reform of the judicial, which is a key priority of the Accession Partnership” and that “[c]ontinued efforts are needed to ensure the independence and impartiality of the judicial, in particular through the implementation of the provisions regarding appointments and promotions.”<sup>102</sup>

The limited progress in Macedonian judicial reform has been noticed by the EU Commission which, in its Communication “Enlargement Strategy and Main Challenges 2010-2011” points to an improvement of the courts’ efficiency, but displays concerns “about the independence and impartiality of the judicial.” According to the Communication, “no further progress was made in ensuring that existing legal provisions were implemented in practice.”<sup>103</sup> The language of the Communication clearly showed that, after the reform reversal of 2007, no major steps forward had been taken. The slow progress of the Macedonian judicial reform has been noticed by foreign and domestic observers alike.<sup>104</sup>

Table 6-4 provides Freedom House’s Judicial Framework and Independence score for the period 2000-2010, while Table 6-5 shows the more nuanced ABA-CEELI judicial reform index for 2002 and 2003.

TABLE 6.4 MACEDONIAN JUDICIAL FRAMEWORK AND INDEPENDENCE

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
4.25	4.25	4.75	4.50	4.00	3.75	3.75	3.75	4.00	4.00	4.00

Source: Freedom House

Note: The years reflect the period of the Report, which reflects an assessment of the previous year’s developments.

Freedom House’s score matches my historical account. In 2001 (as reported in 2002), the index worsened from 4.25 to 4.75, but improved up to 3.75 until 2007 (reported in 2008). Then it reversed to 4.00. Such a reversal occurred in several Macedonian sectorial reforms, and reflects the disillusionment of the Macedonian ruling elites with the EU delay to open accession negotiations even two years after the country became an EU candidate, mainly due to the potential Greek veto over the name of the

TABLE 6.5 MACEDONIAN JUDICIAL REFORM INDEX: TABLE OF FACTOR CORRELATION

<b>I. Quality, Education, and Diversity</b>		<b>2002</b>	<b>2003</b>	<b>Trend</b>
Factor 1	Judicial Qualification and Preparation	Negative	Negative	↔
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Positive	Neutral	↓
Factor 4	Minority and Gender Representation	Negative	Negative	↔
<b>II. Judicial Powers</b>				
Factor 5	Judicial Review of Legislation	Positive	Positive	↔
Factor 6	Judicial Oversight of Administrative Practices	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Positive	Positive	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔
<b>III. Financial Resources</b>				
Factor 10	Budgetary Input	Positive	Neutral	↑
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Neutral	↑
Factor 13	Judicial Security	Positive	Neutral	↓
<b>IV. Structural Safeguard</b>				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Neutral	Neutral	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Negative	Neutral	↑
Factor 19	Judicial Associations	Positive	Positive	↔
<b>V. Accountability and Transparency</b>				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Negative	Negative	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Neutral	Neutral	↔
Factor 24	Publication of Judicial Decisions	Negative	Neutral	↑
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑
<b>VI. Efficiency</b>				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Negative	Negative	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Negative	Neutral	↑

Source: ADA-CELLI. Macedonia Judicial Reform Index 2003, and Macedonia Judicial Reform Index, Volume II, 2004.



country.<sup>105</sup> Table 6-5 cannot tell much, except for confirming a slow improvement in the judiciary from 2002 to 2003 with seven factors that determine the state of the judiciary improved, two worsened, and twenty-one remaining about the same. I develop a further interpretation of the results in the following subsections.

*A consociational interpretation of Macedonian judicial reform*

The Albanian elites of Macedonia perceived the Macedonian judicial system as an instrument of the Macedonian people. In turn, Macedonian elites tried to retain as much control as possible over the judiciary. It is easily conceivable that such conflicts could be resolved through political arrangements rather than legal instruments. It is no coincidence that the focus of domestic and international actors lay in restoring the country's stability through a political arrangement, the Ohrid Agreement, rather than judicial practices. The EU and other international partners who negotiated the Agreement sought to reach an accord by emphasizing only issues contended by Albanians, hence focusing only on consociational practices needed to establish a stable democracy rather than the entire gamut of reforms needed for good governance. Judicial reform is not a consociational practice per se, even though it embodies some consociational practices such as ethnic ratios for the composition of courts and the use of languages of major ethnicities in the legal process. However, when it comes to the delivery of justice, it is the citizen before the law, and ethnicity should no longer play a role; delivering justice does not occur through consociational practices but through judicial practices. Thus, the relevance of judicial reform rests not in establishing a democracy through consociational practices, but in maintaining a stable democracy through the rule of law.

However, it is evident that the EU's need for an independent, impartial, functional and professional judicial system in its member countries through the consociationalist perspective. The rule of law not only reinforces a stable democracy but also builds the consensual framework for its functioning. It assures the functioning of institutions established through elites pacts and may also serve as a reference for citizen's overarching loyalties. Such a stable democracy emerges as a unified pillar in negotiations for further EU integration. Moreover, although judicial systems of EU member countries are national systems, their independence from and impartiality toward domestic politics

may help to establish a supranational network of the judiciary. A number of likeminded judicial systems could assist with EU internal cohesion more than any national legislative, executive and political party. A network of judicial systems that would provide the same justice from Iceland to Cyprus and from Ireland to Turkey might be useful to address transnational issue of transnational crime. It can ultimately serve as a reference for overarching loyalties of the Union.

*A sectorial contextual interpretation of Macedonian judicial reform*

The previous subsection helped to assess the EU's interests in Macedonian judicial reform which has been mainly neutral between the period of 1991-2001. This interval coincided with the EU's fear that pressure for reforms might destabilize the fragile country.<sup>106</sup> The EU 's interests toward judicial reform turned positive after the Zagreb Summit, November 2000, and was reinforced after the Copenhagen European Council, December 2002, which confirmed that countries in the Western Balkans were potential EU candidates. Ever since, the EU's interest in Macedonia's judicial reform has been always as positive. From this point on, the EU has used carrots, or incentives, in the form of financial assistance for judicial reform (€4 million from the CARDS Programme for the 2002-2004 period) as well as its signature on the Stabilization and Association Agreement of April 9, 2001, all in the midst of violent ethnic clashes.<sup>107</sup> Meanwhile, "sticks," or punishments for the unsteady performance of judicial reforms have been overshadowed by the high emphasis the EU has placed on the implementation of the Ohrid Agreement. As the historic process tracing demonstrated, the domestic ruling elites' preferences varied from negative to positive to neutral. The combination of these different preferences explains the variation in the results and pace of judicial reform.

From 1991 to 1995, both Macedonian ruling elites and the EU displayed no interest in Macedonian judicial reform which explains the lack progress. The Law of Courts was an initial step forward, but it dealt mainly with adaptations rather than deep structural and legislative improvements of the existing judicial system. The Dayton Accord, November 1995 relieved some of Macedonia's existential fears and, in 1996, the first steps to reform the judicial were undertaken with the revision of the Criminal Code followed by a new Code of Criminal Procedures in 1997.

The VMRO-PDSH coalition which seized power after the October 1998 elections did almost nothing to reform the judicial. The coalition had no image problem and their priorities lay in sharing power rather than conducting reforms. 1998-2000 became a period of neutral interests in judicial reforms from both the EU and Macedonian ruling elites; this situation caused the reform process which had already begun to stall. The EU's interests in judicial reform throughout the region increased after the launching of the Stabilization and Association Programme, though, ethnic conflict in 2002 brought to the fore some more pressing issues. However, after the 2002 elections, both partners of the coalition, the Macedonian SDSM and the Albanian BDI, had strong incentives for reform; SDSM needed to clean up its tarnished image created during its ruling period between 1990-1998 while BDI wanted to show that it was not just a ragtag group of former guerrillas but a constructive political force. The combination of the EU support with the coalition's interests led to a major breakthrough in the country's judicial reform during 2002-2006. However, one year before July 2008 elections, all parties returned to politics of identity, thus abandoning the path to reform.

The return to power of VMRO-DPMNE and its unlikely coalition with the BDI, the former guerrilla group that fought against the VMRO-DPMNE's government in 2001, brought to the fore some new dynamics. None of the parties had political image problems; VMRO-DPMNE returned to power without some of its most discredited politicians; its former Chairman and Premier Ljubče Georgievski had left the Party along with the majority of its parliamentary fraction to found the VMRO-NP in July 2004; and BDI had already established itself as a political force oriented toward political compromise. The coalition had little incentive to commit itself to judicial reform, hence the reform stalled.

Table 6-6 summarizes these findings.

### **The role of human capital: eliminating alternative explanations**

Several accounts of the Albanian and Macedonian judicial reform process point to the lack of human capital as a causal factor in these countries' slow progress in institutional reforms. For instance, the EC's Communication on Albania 2010 Progress Report points out that "[h]uman and financial resources, as well as infrastructure conditions, are not

TABLE 6.6 DEVELOPMENTS IN MACEDONIAN JUDICIAL REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1991-1995		0	0	<b>No reform.</b> Both the EU and Macedonian ruling elites were interested in maintaining Macedonia's stability, not instituting reform.
1996-1997		0	+	<b>Good progress.</b> The Dayton Accord alleviated some existential fears of Macedonian elites, and turned their attention to reforms. The EU had yet to decide their strategy for the region.
1998-2001		0	0	<b>No reform.</b> With the EU being engaged in helping to solve the Albanian and Kosovo crises and the VMRO-PDSH coalition involved on a silent power sharing deal, Macedonian judicial reform stalled.
2001-2002		+	0	<b>No reform.</b> Armed conflict in the nation forced all parties to focus on forging a political deal rather than sectorial reforms.
2002-2006		+	+	<b>Good progress.</b> The SDSM-BDI coalition was interested in sectorial reforms out of concerns for its image.
2007		+	-	<b>No reform/reform reversal.</b> During the last year of its mandate, the SDSM-BDI coalition was interested in re-election, hence shifted to politics of identity.
2008-2010		+	0	<b>No reform.</b> The VMRO-BDI coalition focused on other priorities.

adequate and need to be improved to ensure the efficient functioning of courts.”<sup>108</sup> In the case of Macedonia, the EC Communication on Macedonia 2010 Progress Report highlights that

the absence of a human resource management system has slowed down the recruitment of graduates from the academy for training judges and prosecutors into the judicial. The judicial continues to face budgetary constraints. The Skopje 2 basic court, which is the court with the largest number of cases, and the four courts of appeal along with the administrative court were unable to reduce their backlogs. The administrative court, the court of appeal in Gostivar and most of the Public Prosecutor’s offices remained understaffed, which affected their performance.<sup>109</sup>

These are only two of the most recent observations related to the negative role that scarce human resources are playing in the reform of the Albanian and Macedonian judicial systems. The question is: how much do they count in our assessment of progress toward these reforms? Carothers (2006: 8) summarizes the issue as follows:

A key step is achieving genuine judicial independence. Some of the above measures foster this goal, especially better salaries and revised selection procedures for judges. But the most crucial changes lie elsewhere. Above all, government officials must refrain from interfering with judicial decision making and accept the judicial as an independent authority. They must give up the habit of placing themselves above the law (Carothers 2006: 8).

A careful observation of the historical process tracing and the Freedom House’s Judicial Framework and Independence score reveals that obstacles to judicial reform as well as breakthroughs are caused by top government actors. They ultimately reflect political actors’ interests related to the judicial reform. An examination of the historical process tracing of the judicial reforms in Albania and Macedonia as well as the Freedom House’s Judicial Framework and Independence score show that all the breakthroughs in

judicial reforms in both countries have resulted from leaders' political will to institute such reforms. Only once, in the case of Albania during 2006-2007, has the score improved due to the resistance of the judiciary to government's encroachments.

The lack of human resources cannot be an alternative explanation. While purges in the Albanian judicial system during most of the 1990s and vacancies in the Macedonia judicial system during 2000 may have slowed down the pace of reforms, both phenomena have been caused by political agents: in the case of Albania, the ruling PD sought to control the judicial by replacing judicial personnel inherited from the past—hence deemed loyal to the PS—with its hurriedly trained partisans. In Macedonia, most of the vacancies were caused by prolonging difficult negotiations between political actors from different ethnic groups while some other vacancies were caused by the cumbersome process of double majority.

If human capital were an important factor, we would have observed incremental improvements of the judiciary as new graduates enter the system. But that does not explain the reform uneven record. There is abundant evidence to show that the human capital—or the lack thereof—is not an explanatory variable of the Albanian and Macedonian progress in judicial reforms.

## **Conclusions**

Although the judicial system does not fall within the traditional concept of consociational practices that help to establish and maintain a stable democracy, it remains an key player in assuring that the political and institutional arrangements of these practices survive centripetal forces. Some consociational practices such as ethnic and linguistic representation in judicial administration have been important elements of Macedonian judicial reform; yet, the reform has elements that go far beyond these consociational practices. Moreover, historical process tracing has provided more evidence to support my sectorial contextual model. The combination of EU and domestic leaders' political interests produces the policy outcomes theorized in Chapter 3.

However, the EU interest in the EE judicial reform stems from the need to equip EU membership aspiring countries with judicial systems and practices that would assure equal and likewise enforcement of contracted consociational practices throughout the EU

space. If the EU evolved a stable, democratic entity due to consociational practices, a social contract would exist among pillar-states. Of course, most cases related to breaches of such a contract go to the European Court of Justice, but procedures and practices of this court cannot be detached from EU member countries' procedures and practices. Indeed, they represent a European legal tradition reinforced by EU member countries' judicial systems. In the very end, as guarantors of the enforcement of consociational agreements among EU member countries, Eastern European independent, impartial, professional and efficient judicial systems become important components of consociational arrangements necessary for the establishment and maintenance of the EU as a stable democratic entity.

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<sup>1</sup> European Commission. "Communication from the Commission to the Council and the European Parliament Commission. "Opinion on Albania's Application for Membership of the European Union." COM (2010) 680. At [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Accessed November 23, 2010].

<sup>2</sup> Rule of Law Working Group. "Introduction." DG Enlargement - Donor Coordination Conference, Brussels 23-24 October 2008. At [http://ec.europa.eu/enlargement/pdf/donor\\_conference/16\\_dcf\\_working\\_group\\_rule\\_of\\_law\\_en.pdf](http://ec.europa.eu/enlargement/pdf/donor_conference/16_dcf_working_group_rule_of_law_en.pdf) [Accessed November 28, 2010].

<sup>3</sup> For a review on the connection between democratic consolidation and successful economic reform with independent judiciaries that protect political and property rights as well as the contribution of the courts to policymaking and the investigation of abuses of power in several West European democracies, see (Linz and Stepan 1996: 10-15; Shapiro and Stone 1994; Nelken 1996).

<sup>4</sup> OSCE Presence in Albania. "Legal Sector Report for Albania, 2004," p. 1. At [http://www.osce.org/documents/pia/2004/02/2117\\_en.pdf](http://www.osce.org/documents/pia/2004/02/2117_en.pdf) [Accessed May 22, 2007].

<sup>5</sup> Ibid.

<sup>6</sup> The Venice Commission. "Opinion on the Albanian Law on the Organization of the Judicial," Strasbourg, December 4, 2005. At [http://www.venice.coe.int/docs/1995/CDL\(1995\)074rev-e.asp](http://www.venice.coe.int/docs/1995/CDL(1995)074rev-e.asp) [Accessed May 17, 2007].

<sup>7</sup> Ibid. As the Commission notes

One of the effects of the adoption of the Law on the Organisation of the Judicial in April 1992 was to abrogate a prior ordinary Law on the Status of Magistrates, applicable to both judges and prosecutors. That law contained detailed provisions on the rights and duties of magistrates, including extensive procedural and substantive safeguards against arbitrary removal from office.

<sup>8</sup> OSCE Presence in Albania. "Legal Sector Report for Albania, 2004," p. 1.

<sup>9</sup> I have reached such a conclusion from my conversations and exchanges with other colleagues during my participation in Albanian politics as a Member of *Kuvend*, 1991-1996.

<sup>10</sup> Personally, I remember the "Tirana Court incident," May 1992, when then President Sali Berisha went to the Tirana District Court and, in a speech, tried to steer the judges on how to rule.

<sup>11</sup> The Venice Commission. "Opinion on the Albanian Law on the Organization of the Judicial," Strasbourg, December 4, 2005. As the Opinion states,

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it was clearly the intention of the statutory scheme established by Chapter VI that similar implementing legislation be introduced – Article 5 provides that the organisation of the courts is to be Regulated by law; Article 10 provides that the circumstances and procedures for the removal of judges from office should be provided for by law; furthermore, it is not consistent with international standards for legal guarantees of judicial independence, which Article 10 also pledges to respect, that questions of judicial qualification, appointment, transfer and discipline be left unregulated by either the Constitution or an Act of Parliament

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Hektor Frashëri. “Addendum the Opinion on the Albanian Law on the Organization of the Judicial,” Tirana, December 7, 1995. At [http://www.venice.coe.int/docs/1995/CDL\(1995\)074add-e.asp](http://www.venice.coe.int/docs/1995/CDL(1995)074add-e.asp) [Accessed May 17, 2007]

<sup>15</sup> Ibid.

<sup>16</sup> As the OSCE Legal Sector Report, 2004 notes, “A number of new judges were assigned to the courts in 1994 after taking a controversial six-month special course and then completing the “correspondence” system at the Law Faculty in Tirana on an accelerated basis (six more months) [Some were appointed as prosecutors, investigators or to other governmental positions]. The 1997 predecessor to the Judicial Power Law [Law No. 8265, December 18, 1997, On the Organization of Justice in the Republic of Albania] would have removed these judges from their other positions, but after additional controversy, the Judicial Power Law repealed the earlier law, while requiring a one-time competency test for all first instance judges with less than ten years of judicial experience [Judicial Power Law, article 48]. This test took place in 1999 and of the judges who participated, four failed but one was re-tested and passed. The three who failed, and over 30 who refused to take the examination, were discharged. Now, nine years after the six-month courses and eight years after many of its graduates were appointed to judicial positions, the judges interviewed generally reported that those graduates who remain as judges have been well integrated into the system.” <sup>16</sup> OSCE Presence in Albania. “Legal Sector Report for Albania,” 2004, p. 18. At [http://www.osce.org/documents/pia/2004/02/2117\\_en.pdf](http://www.osce.org/documents/pia/2004/02/2117_en.pdf) [Accessed May 22, 2007].

<sup>17</sup> “Second Joint Programme Between the European Union and the Council of Europe for the Promotion of Legal System Reform in Albania, Final Report, Restricted GR-EDS(98)5” [For the meeting of the GR-EDS on 2 February 1998].

<sup>18</sup> World Bank. “Report No. 19915-ALB: Project Appraisal Document,” March 1, 2000. At: [http://www-wds.worldbank.org/external/default/WDSCContentServer/IW3P/IB/2000/04/07/000094946\\_00030805302144/Rendered/INDEX/multi\\_page.txt](http://www-wds.worldbank.org/external/default/WDSCContentServer/IW3P/IB/2000/04/07/000094946_00030805302144/Rendered/INDEX/multi_page.txt) [Accessed May 18, 2007].

<sup>19</sup> The Albanian Government Program, July 2002.

<sup>20</sup> See for instance, Hysi (2004).

<sup>21</sup> Interview with Arben Imami who held two ministerial positions in the 1997-2001 coalition (Minister of Legislative Reform and Relations with the *Kuvend* (1997-1999); and Minister of Justice (2000-2001); and in the 2001-2005 coalition was Minister of Local Decentralization (2001-2002).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid. Related to the situation of the judicial during this period, OSCE suggested that, a more transparent system should be adopted for assigning cases. At the moment there is no special law, nor a united sub-statutory act, specifying how lots for assigning court cases are drawn... There is no legislative guidance for the transfer of judges and no criteria for their promotion [...]. The Judges who were interviewed occasionally reported instances of undue pressure from other branches of the government to make particular decisions, especially in cases when the State was a party.

In the same line, the EU observed that,

despite some institutional and legal measures such as Standing Rules of Minister of Justice for the Judicial Administration, the judicial administration still enjoys a low level of remuneration and poor working conditions. Concerning the above issues, the legal framework does not



- offer clear and detailed rules for the mission, tasks and the relationship of judicial administration with the justice system and the third parties.
- See OSCE Presence in Albania. "Legal Sector Report for Albania," 2004, p. 18. At [http://www.osce.org/documents/pia/2004/02/2117\\_en.pdf](http://www.osce.org/documents/pia/2004/02/2117_en.pdf) [Accessed May 18, 2007].
- <sup>23</sup> European Union. "Increasing Transparency and Improvement of Management of Criminal and Civil Judicial Processes," 2004; and European Union. "Increasing Transparency and Improvement of Management of Criminal and Civil Judicial Processes," 2004.
- <sup>24</sup> Commission of the European Communities. "Albania: Stabilisation and Association Report 2004," p. 1. At [http://www.delalb.ec.europa.eu/en/documents\\_march\\_2004/Country\\_report\\_Albanie\\_04\\_03\\_29\\_Final.pdf](http://www.delalb.ec.europa.eu/en/documents_march_2004/Country_report_Albanie_04_03_29_Final.pdf) [Visiting May 19, 2007].
- <sup>25</sup> Freedom House. "Study: Slow and Uneven Progress in Balkan Democratization," Press Release, April 26, 2004. At <http://www.freedomhouse.org/media/pressre1/042604.htm> [Accessed May 19, 2007].
- <sup>26</sup> Human Rights Watch. "Human Rights Development," 2004, p. 4.
- <sup>27</sup> Parliamentary Assembly of the Council of Europe. "Resolution 1377 Honouring of obligations and commitments by Albania, 2004." At <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/ERES1377.htm> [Accessed May 20, 2007].
- <sup>28</sup> These interests can be considered negative because, while there existed a high awareness in the Albanian society about the need for judiciary reform admitted and reiterated by all political and societal actors, the Albanian government did not undertake the necessary measures to conduct such reform. The awareness of the need for judicial reforms in the country stays in stark difference with Albanian society's inexistent sensibility related to the asylum reform. In the latter, I have evaluated domestic leaders' interest as inexistent (0).
- <sup>29</sup> The Council of the European Union. "Council Decision of January 30 On Principles, Priorities, and Conditions Contained in the European Partnership with Albania and Repealing Decision 2004/5/19/EC," 2006/54/EC, 2006. At [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=306D0054&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=306D0054&lg=en) [Accessed May 20, 2007].
- <sup>30</sup> Parliamentary Assembly of the Council of Europe. "Resolution 1538: Honouring of obligations and commitments by Albania, 2007." At <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1538.htm> [Accessed May 20, 2007]. Among the recommendations directed to the Albanian government are:
1. take into account Council of Europe expert advice on draft amendments to the law on the organisation of the judiciary in order to strengthen the independence and professionalism of judges;
  2. address the problem of remuneration of judges and increase the budget for the judicial;
  3. adopt legislation on the status, recruitment, competencies and remuneration of courts' administrative staff;
  4. continue the training of judges and prosecutors through the Magistrates' School and provide for competitive examinations for new appointments;
  5. take into account Council of Europe expert advice on the Law on the Organization of the Office of the Prosecutor and introduce a system for the evaluation of prosecutors as was recently done for judges.
- <sup>31</sup> Commission of the European Communities. "Albania 2005 Progress Report." SEC(2005) 1421, Brussels, November 9, 2005. At [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1421\\_final\\_progress\\_report\\_al\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1421_final_progress_report_al_en.pdf) [Accessed November 29, 2010].
- <sup>32</sup> EURALIUS (European Assistance to the Albanian Justice System) is a project funded by the European Union under the Albania CARDS 2002 program conducted by the Ministry of Justice of Austria, which is implementing the project in a consortium together with the Ministries of Justice of Germany and Italy. At: <http://www.euralius.org.al/php/index.php?lang=1&page=1> [Accessed May 28, 2007].
- <sup>33</sup> EURALIUS. "Background Information for Designing the Future Court Branches and for Selecting a Possible Pilot Court for Court Merging," 2007. At

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<http://www.euralius.org.al/recommendations/eng/Microsoft Word Background information for designing the.pdf> [Accessed May 28, 2007].

<sup>34</sup> Trazhgim Sokolaj. "Ngec shkrirja e gjykatave e prokurorive" [Stalls the merge of courts and prosecutor offices], May 28, 2007. At <http://www.panorama.com.al/> [Accessed May 28, 2007].

<sup>35</sup> Freedom House. "Country Report 2008: Albania." At <http://www.freedomhouse.org/template.cfm?page=47&nit=443&year=2008> [Accessed November 25, 2010].

<sup>36</sup> Ibid.

<sup>37</sup> Freedom House. "Country Report 2007: Albania." At <http://www.freedomhouse.org/template.cfm?page=47&nit=414&year=2007> [Accessed November 25, 2010].

<sup>38</sup> Commission of the European Communities. "Albania 2006 Progress Report." SEC(2006) 1383, Brussels, November 8, 2006. At [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/al\\_sec\\_1383\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/al_sec_1383_en.pdf) [Accessed November 29, 2010].

<sup>39</sup> Commission of the European Communities. "Albania 2006 Progress Report." As the Report goes on

The proposed new Law on the Judicial does not address three long-standing shortfalls: improving the independence and constitutional protection of judges, improving the pay and status of the administrative staff of the judicial system (who are not civil servants) and the appropriate division of competences between the judicial inspectorates of the High Council of Justice and the Ministry of Justice. The two inspectorates currently divide work informally. The proposed provisions for the transparent assignment of cases to judges will require implementing legislation to establish objective rules. A system for the evaluation of prosecutors is not yet in place. Implementation of a planned reorganisation of district courts is needed to improve efficiency, but has not yet begun. Many courts still lack adequate space for courtrooms, judges' offices, archives and equipment. Co-operation between the police and the judicial generally remains poor. The Bailiff Service remains hindered in executing judgements by lack of funds, unclear court decisions, and the refusal of many state organisations to meet their judgment obligations.

<sup>40</sup> Freedom House. "Country Report 2008: Albania."

<sup>41</sup> Ibid.

<sup>42</sup> See Ditmir Bushati. "Albania." 2009. Freedom House. At <http://www.freedomhouse.org/uploads/nit/2009/Albania-final.pdf> [Accessed November 25, 2010].

According to the Freedom House Report

Some of the terminated judges challenged the HCJ decision before the high court [*sic*], which declared the terminations unconstitutional, and in October 2008, these judges were reappointed to the courts that had taken over the jurisdiction of the dissolved courts.

<sup>43</sup> Freedom House. "Country Report 2008: Albania." See also "EURALIUS recommendations on different models of reorganization of district courts." At [www.euralius.org](http://www.euralius.org).

<sup>44</sup> Freedom House. "Country Report 2008: Albania"; See also "EURALIUS Report on the impact on reorganization of district courts," At [www.euralius.org](http://www.euralius.org).

<sup>45</sup> The exact phrase is "crime world." These should be serious accusations for every prosecutor in the world. However, in the Albanian case, they are often rhetoric used to discharge unwanted public servants.

<sup>46</sup> Freedom House. "Country Report 2008: Albania." See also Decision 26/2006 of the Constitutional Court of Albania. At <http://www.gjk.gov.al/> [Accessed November 27, 2010].

<sup>47</sup> Statement made by Member of Parliament Spartak Ngjela, November 5, 2007, plenary session on dismissal of the prosecutor general, Albanian Parliament; also Interview with Spartak Ngjela, TV Vizion Plus, November 5, 2007. Cited from Freedom House. "Country Report 2008: Albania."

<sup>48</sup> The history of Albanian prosecutors general since the fall of the Communist regime abounds with dismissals, resignations, and judgments by the Constitutional Court that have never been enforced.<sup>13</sup> Yet, overall relations between the government and the High Council of Justice have improved with the election

of President Topi and the replacement of High Council of Justice deputy chairman Ilir Panda with Kreshnik Spahiu.<sup>48</sup> Cited from Freedom House. "Country Report 2008: Albania." See also Rulings of the Constitutional Court No. 75/2002, No. 76/2002, No. 18/2003, No. 26/2006; and also Commission of the European Communities. "Albania 2007 Progress Report." SEC (2007) 1429, November 6, 2007. At [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/albania\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/albania_progress_reports_en.pdf) [Accessed November 27, 2010].

<sup>49</sup> American Bar Association, Rule of Law Initiative. "Judicial Reform Index for Albania, 2008" Volume IV, December 2008, p. v. At [http://www.abanet.org/rol/publications/albania\\_jri\\_iv\\_12\\_2008\\_en.pdf](http://www.abanet.org/rol/publications/albania_jri_iv_12_2008_en.pdf) [Accessed November 27, 2010]. As the Report summarized the progress and regress of the Albanian Judicial Reform, it noted that

Of the 30 factors analyzed in the JRI, the correlations assigned for two factors (judicial associations and objective judicial advancement criteria) improved since 2006, while two factors (guaranteed tenure and publication of judicial decisions) suffered a decline. Overall, a total of seven factors, including those relating to training of judicial candidates and sitting judges, judicial jurisdiction over human rights cases, appellate process, budgetary process, judicial immunity, and professional associations, were rated positive in 2008, while 19 factors received neutral correlations. The remaining four factors, including those related to improper influence in judicial decision-making, enforcement powers of the courts, public access to court proceedings, and publication of judicial decisions, continue to carry negative correlations.

<sup>50</sup> Ibid.

<sup>51</sup> Commission of the European Communities. "Albania 2007 Progress Report," p. 10.

<sup>52</sup> See Ditmir Bushati. "Albania." 2009. As the Freedom House Report explains

The Parliament's subcommittee on justice reform brings together Representatives of justice institutions and international institutions to filter all legal initiatives prior to sending them to the laws committee for adoption and later to the plenary session of the assembly. Yet the subcommittee met officially only once in 2008. Still, its creation marks a salutary step forward—the government ignores its existence in preparing and adopting laws in the area of justice—in the lawmaking process in Albania.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Gledis Gjipali. "Albania." 2010. Freedom House. At <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Macedonia-proof-II.pdf> [Accessed November 28, 2010].

<sup>57</sup> Ibid.

<sup>58</sup> Commission of the European Communities. "Albania 2008 Progress Report." SEC(2008) 2692 final, Brussels, November 11, 2008. At [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/albania\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/albania_progress_report_en.pdf) [Accessed November 29, 2010].

<sup>59</sup> Ibid.

<sup>60</sup> Embassy of the United States in Tirana. "Delays in Approving Law on Administrative Courts Jeopardizes Continuation of USG Assistance for Administrative Courts." Press Release, September 27, 2010. At [http://tirana.usembassy.gov/10pr\\_0927.html](http://tirana.usembassy.gov/10pr_0927.html) [Accessed November 28, 2010].

<sup>61</sup> Gledis Gjipali. "Albania." 2010. Freedom House.

<sup>62</sup> Commission of the European Communities. "Albania 2009 Progress Report." SEC(2009) 1337/3, Brussels, October 14, 2009. At [http://ec.europa.eu/delegations/albania/documents/eu\\_albania/2009\\_progress\\_report\\_en.pdf](http://ec.europa.eu/delegations/albania/documents/eu_albania/2009_progress_report_en.pdf) [Accessed November 29, 2010].

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<sup>63</sup> Embassy of the United States in Tirana. “Delays in Approving Law on Administrative Courts Jeopardizes Continuation of USG Assistance for Administrative Courts.”

<sup>64</sup> “Gjykata Administrative, SHBA: Afati për fondin, deri në janar 2011” [The Administrative Court, the US: The Deadline for the Fund until January 2011]. Shekulli, October 29, 2010. At <http://www.shekulli.com.al/2010/10/29/ambasadoret-e-be-se-takojne-ramen-dhe-berishen.html> [Accessed November 28, 2010].

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> European Commission. “Communication from the Commission to the Council and the European Parliament “Enlargement Strategy and Main Challenges 2010-2011.” COM (2010) 660 final). At [http://ec.europa.eu/enlargement/press\\_corner/key\\_documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key_documents/reports_nov_2010_en.htm) [Accessed November 23, 2010].

<sup>68</sup> The ratings of the Freedom House’s Nations in Transit annual reports follow a quarter-point scale. Changes in ratings are based on events during the study year in relation to the previous year. Minor to moderate developments typically warrant a positive or negative change of a quarter (0.25) to a half (0.50) point. Significant developments typically warrant a positive or negative change of three-quarters (0.75) to a full (1.00) point. It is rare that the rating in any category will fluctuate by more than a full point (1.00) in a single year. The ratings process for *Nations in Transit 2005* involved four steps:

1. Authors of individual country reports suggested preliminary ratings in all seven categories covered by the study.
2. The U.S. and CEE-NIS (Central and Eastern Europe–Newly Independent States) academic advisers evaluated the ratings and reviewed reports for accuracy, objectivity, and completeness of information.
3. Report authors were given the opportunity to dispute any revised rating that differed from the original by more than .50 point.
4. Freedom House refereed any disputed ratings and, if the evidence warranted, considered further adjustments. Final editorial authority for the ratings rested with Freedom House.

As for the ABA/CEELI’s methodology, their report explains as follows:

ABA/CEELI sought to address [...] criticisms [regarding assessments of the state of the judiciary] by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”; and Council of Europe, the European Charter on the Statute for Judges. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be

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programmatically useful and justified. The categories incorporated incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country’s reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a neutral” [...] Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

<sup>69</sup> The ratings follow a quarter-point scale. Changes in ratings are based on events during the study year in relation to the previous year. Minor to moderate developments typically warrant a positive or negative change of a quarter (0.25) to a half (0.50) point. Significant developments typically warrant a positive or negative change of three-quarters (0.75) to a full (1.00) point. It is rare that the rating in any category will fluctuate by more than a full point (1.00) in a single year. The ratings process for *Nations in Transit 2005* involved four steps:

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4. Freedom House refereed any disputed ratings and, if the evidence warranted, considered further adjustments. Final editorial authority for the ratings rested with Freedom House.

See <http://www.freedomhouse.eu/nitransit/2006/methodology.pdf> (Accessed March 2011).

<sup>70</sup> The European Assistance Mission to the Albanian Justice System (EURALIUS) stated as its objective

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To facilitate, through the building of the required capacities within the Ministry of Justice and the Judicial, the development of a more independent, impartial, efficient, professional, transparent and modern justice system in Albania, therefore contributing to the restoring of people's confidence in their institutions and to the consolidation of democracy and rule of law in the country, as required by the Stabilisation and Association process with the EU.

EURALIUS was a project funded by the EU under the Albania CARDS 2002 Programme. The Contractor of the Grant Agreement No. 2005/103284, which is the basis of the EURALIUS, is the Ministry of Justice of Austria, which is implementing the project in cooperation with the Ministries of Justice of Germany and Italy. The implementation of the project started on June, 13, 2005 and was designed for an initial period of two years. EURALIUS was led by Gerald Colledani, Vice-President of the Court of Appeal of Innsbruck, Austria, and it consisted in a total of 25 personnel, of which 9 were non-Albanian and 16 were Albanian citizens.

<sup>71</sup> This approach also explains the complexity of EU assistance to Albania where its assistance to the judicial reform is often intertwined with assistance to police, border control, anti-corruption policies, and the asylum and immigration system. In its "Resolution on the Conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Albania," the European Parliament notes that it "underlines the importance of the Union's assistance missions for capacity building and welcomes the results achieved by the police assistance mission (PAMECA), customs assistance mission (EU-CAFAO Albania) and the judicial assistance mission (EURALIUS); taking into account the extensiveness and complexity of the fight against organised crime in the Western Balkans, calls on the Commission to substantially increase and strengthen EU assistance in the police (PAMECA) and rule of law (EURALIUS) area..." At <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0344+0+DOC+XML+V0//EN> [Accessed May 28, 2007].

<sup>72</sup> Freedom House. "Country Report 2007: Albania."

<sup>73</sup> American Bar Association-Central Eastern European Legal Initiative (ABA-CEELI). "Judicial Reform Index for Albania, 2006. Volume III. At <http://www.abanet.org/rol/docs/albania-jri-volume-3.pdf> [Accessed November 30, 2010].

<sup>74</sup> Freedom House. "Country Report 2003: Macedonia." At <http://www.freedomhouse.org/template.cfm?page=47&nit=242&year=2003> [Accessed December 1, 2010].

<sup>75</sup> American Bar Association-Central Eastern European Legal Initiative (ABA-CEELI). "Judicial Reform Index for Macedonia, 2003. Volume II. At [http://www.abanet.org/rol/publications/macedonia\\_jri\\_2003.pdf](http://www.abanet.org/rol/publications/macedonia_jri_2003.pdf) [Accessed December 2, 2010].

<sup>76</sup> Ibid.

<sup>77</sup> See for instance Freedom House. "Country Report 2005: Macedonia."

<sup>78</sup> Freedom House. "Country Report 2003: Macedonia."

<sup>79</sup> In fact, after Interior Minister Boškovski personally injured four spectators at a Lions' military exercise in May, Prime Minister Georgievski pronounced that, irrespective of what the interior minister might do, he would be amnestied "for past merit in service of the state." See Freedom House. "Country Report 2003: Macedonia"; also BBC. "Macedonia minister 'shoots three.'" May 15, 2002. At <http://news.bbc.co.uk/2/hi/europe/1989547.stm> [Accessed December 2, 2010].

Moreover, Boškovski was indicted in 2003 by the Cervenkovski government for staging the assassination of six Pakistanis and one Indian illegal immigrant in March 2002 and exposing them to the media and public opinion as Islamic terrorists who wanted to attack Macedonian institutions and foreign embassies in the country. After collecting enough evidence, the successor government brought charges against him, however he fled the country and hid in Croatia. Mr. Boshkovski had dual Croatian and Macedonian citizenship. See BBC. "Fake Shoot-out" Minister Flees." May 8, 2004. At <http://news.bbc.co.uk/2/hi/europe/3696781.stm> [Accessed December 2, 2010].

In another case, during the national elections of September 2002 which VMRO-DPMNE lost to SDSM, special police troops, Lions, loyal to Minister Boškovski, "raided the printing company which produced the election's ballot papers, and Interior Minister Ljube Boskovski said 500,000 of the papers had been burned." However, Macedonia's Electoral Commission denied the allegations, saying that "the numbers of ballot papers and registered voters were the same." See BBC. "Fraud Row Clouds Macedonia

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Poll.” September 19, 2002. At <http://news.bbc.co.uk/2/hi/europe/2267742.stm> [Accessed December 2, 2010].

Boškovski has been one of two Macedonian citizens to be tried in the International Criminal Court for Former Yugoslavia (ICTY). On August 12, 2001 a special police unit under the command of Jovan Tarčulovski raided the Albanian village of Ljuboten, north of the capital Skopje. During the raid, seven villagers had been killed, 14 houses burned, and tens of others residents reportedly harassed in police stations around Skopje. According to the charges, the victims were innocent civilians, and the destroyed houses were not military targets. On July 10, after a year in session, the ICTY at The Hague pronounced its verdict in the case of the two indicted officials from Macedonia. Boškovski was acquitted. Police commander Jovan Tarčulovski was sentenced to 12 years.

In spite—or because—of allegations that Boškovski has been in Ljuboten directing the police operation himself, Boškovski is hailed as a hero among segments of Macedonian society. Reportedly, a small government delegation went from Skopje to Hague to support the indicted officials during pronouncement of the verdict, comprising the Ministers of Justice, Interior, and Transportation as well as some members of *Sobranie*. They had brought Boškovski back to Skopje on a small government plane the next day. He was received as a hero. Premier Nikola Gruevski greeted him at the airport, together with a crowd of fans. As Macedonian custom would have it, he was offered bread and salt. Music, general euphoria, and T-shirts with his name abounded. His first act as he stepped down from the plane was to kiss the ground. Said Boškovski: “After a difficult time, a Macedonian Golgotha we had to go through, I have another responsibility. To take care of the family of our brother Jovan Tarčulovski. To help all we can.”

The Macedonian government officially welcomed the verdict releasing Boškovski, same as has ruling VMRO, Boškovski's party. Opposition SDSM and the two major Albanian parties, BDI and PDSH did not issue reactions. However, families of victims from Ljuboten were horrified by the acquittal of Boškovski. Reportedly Qani Jashari, the father of two men who were killed in the raid said: “This is a scandal.” Their brother, Afet Jasari, said he had nothing more to look for in Macedonia.

Risto Karajkov describes Boškovski's time of glory as follows:

Mr. Boskovski has been on the front pages since his return. Cameras followed him to his native village of Celopek. Crowds greeted him at a concert he attended with his wife in Ohrid. Some papers have already hinted that the office of the President is vacant next year. Incumbent Branko Crvenkovski has recently said he would not run again. Mr. Boskovski has not said much about going back to politics. He said he would wait for the trial to fully end first.

Boškovski's legal problems did not end there. When he fled to Croatia from Macedonia back in 2004, Croatian authorities arrested him in connection with the controversial case of “Rastanski Lozja.” The trial for Rastanski Lozja took place during a time of severe political upheaval in Macedonia and the accused were eventually acquitted. But Croatia pressed charges against Boškovski, who has already fled there. The trial in the northwest Croatian city of Pula has been postponed several times due to the defendant's failure to appear before the Court. Including detention time in Croatia before he was sent to The Hague, the former minister has already stayed behind bars for over four years. According to Hague rules, detainees are not entitled to compensation in a case of acquittal.

See Risto Karajkov. “Boskovski Walks Free.” July 23, 2008. *Osservatorio Balkani e Caucasio*. At <http://www.balcanicaucaso.org/eng/Regions-and-countries/Macedonia/Boskovski-Walks-Free> [Accessed December 2, 2010]; also SETIMES. “Croatia Postpones Murder Trial of Former Macedonian Interior Minister.” February 4, 2009. At [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/newsbriefs/2009/02/04/nb-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2009/02/04/nb-03) [Accessed December 2, 2010].

For a political portrait of Mr. Boškovski and his relationship with former Premier Georgievski see Dejan Georgievski. “Fratello Dove Sei? Un Profilo del Ministro Macedone Boskovski” [Brother Where Are You? A Portrait of the Macedonian Minister Boškovski]. June 5, 2002. *Osservatorio Balkani*. At <http://old.osservatorioibalcani.org/article/articleview/940/1/46/> [Accessed December 2, 2010].

<sup>80</sup> Freedom House. “Country Report 2003: Macedonia.”

<sup>81</sup> Freedom House. “Country Report 2005: Macedonia.” <http://www.freedomhouse.org/template.cfm?page=47&nit=364&year=2005> [Accessed December 1, 2010].

<sup>82</sup> Freedom House. "Country Report 2004: Macedonia." At <http://www.freedomhouse.org/template.cfm?page=47&nit=339&year=2004> [Accessed December 1, 2010].

<sup>83</sup> Ibid.

<sup>84</sup> The Macedonian judicial system was confronted with inefficiency. In 2004 alone, more than a million legal cases were processed in the Macedonian courts. In March 2005, the total number of pending cases was 730,700; among these, 296,000 were decisions that needed to be implemented and 227,000 were "misdemeanor" cases. The average duration of a civil proceeding was nine and a half months in the first instance and over 70 days for an appeal, and criminal cases duration was also nine and a half months. The judiciary's insufficient infrastructure and lack of resources were also serious problems (Ibid).

<sup>85</sup> Ibid.

<sup>86</sup> Freedom House. "Country Report 2006: Macedonia." At <http://www.freedomhouse.org/template.cfm?page=47&nit=395&year=2006> [Accessed December 1, 2010].

<sup>87</sup> The Judicial Council consists of seven individuals appointed by a parliamentary commission and proposes the appointment, dismissal, and disciplinary decisions concerning judges, with such decisions then taken up by the Sobranie. Since members of the Judicial Council are selected by a simple majority of votes in the Parliament, the governing coalition effectively has control over the appointment of both. See <sup>87</sup> Freedom House. "Country Report 2006: Macedonia."

<sup>88</sup> Freedom House. "Country Report 2006: Macedonia."

<sup>89</sup> Freedom House. "Country Report 2007: Macedonia." At <http://www.freedomhouse.org/template.cfm?page=47&nit=429&year=2007> [Accessed December 1, 2010].

<sup>90</sup> Freedom House. "Country Report 2007: Macedonia."

<sup>91</sup> Communication from the Commission to the Council and the European Parliament "Former Yugoslav Republic of Macedonia 2006 Progress Report." SEC (2006) 1387. Brussels, November 8, 2008. At [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/fyrom\\_sec\\_1387\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/fyrom_sec_1387_en.pdf) [Accessed December 4, 2010].

<sup>92</sup> Ibid.

<sup>93</sup> Freedom House. "Country Report 2008: Macedonia." At <http://www.freedomhouse.org/template.cfm?page=47&nit=460&year=2008> [Accessed December 1, 2010].

<sup>94</sup> Communication from the Commission to the Council and the European Parliament "Former Yugoslav Republic of Macedonia 2007 Progress Report." SEC (2007) 1432. Brussels, November 6, 2007. At [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/fyrom\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/fyrom_progress_reports_en.pdf) [Accessed December 4, 2010]. As the Report noted: "[o]verall, steps were undertaken to gradually address the deficiencies of the judicial system. However, a number of delays were encountered, notably as regards the appointments to the Judicial Council and the reform of the prosecution service."

<sup>95</sup> Goran Trajkov. "VMRO-DPMNE and DUI Form Ruling Coalition in Macedonia." SETimes, July 8, 2008. At

[http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2008/07/08/feature-02](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/07/08/feature-02) [Accessed December 5, 2010].

<sup>96</sup> See Zhidas Daskalovski. "Macedonia." 2009. Freedom House. At <http://www.freedomhouse.org/uploads/nit/2009/Macedonia-final.pdf> [Accessed on November 22, 2010].

<sup>97</sup> Communication from the Commission to the Council and the European Parliament "Former Yugoslav Republic of Macedonia 2008 Progress Report." SEC (2007) 2695. Brussels, November 5, 2007. At [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/the_former_yugoslav_republic_of_macedonia_progress_report_en.pdf) [Accessed December 4, 2010].

<sup>98</sup> See Zhidas Daskalovski. "Macedonia." 2010. Freedom House. At <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Macedonia-proof-II.pdf> [Accessed November 22, 2010].

<sup>99</sup> European Commission, Communication from the Commission to the European Parliament and the Council. "The Former Yugoslav Republic of Macedonia 2009 Progress Report." SEC (2009). Brussels, November 14, 2009. At [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/mk\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/mk_rapport_2009_en.pdf) [Accessed December 4, 2010].

<sup>100</sup> See Zhidas Daskalovski. "Macedonia." 2010. Freedom House.

<sup>101</sup> OSCE, Spillover Monitor Mission to Skopje. "Legal Analysis: Independence of the Judicial." November 2009.



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<sup>102</sup> European Commission, Communication from the Commission to the European Parliament and the Council. “The Former Yugoslav Republic of Macedonia 2009 Progress Report.”

<sup>103</sup> European Commission. “Communication from the Commission to the Council and the European Parliament “Enlargement Strategy and Main Challenges 2010-2011.” COM (2010) 660 final). At [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) [Accessed November 23, 2010].

<sup>104</sup> For instance, Filip Taseski (2010) assesses that “Macedonia badly failed on the assessment from the European Commission.”

<sup>105</sup> See Risto Karajkov. “Macedonia: Stuck in the Waiting Room.” Osservatorio Balkani and Caucaso, June 14, 2010 <http://www.balcanicaucaso.org/eng/Regions-and-countries/Macedonia/Macedonia-Stuck-in-the-Waiting-Room> (Accessed March 2011).

<sup>106</sup> Lydia Brashear offers a recount of her work as an attorney with ABA-CEELI in Skopje, 1995. She mentions the EU’s ECPHARE Programme only as a donor. See Lydia Brashear. “A Year in the Balkans: Macedonia and the Rule of Law.” At <http://www.abanet.org/irr/hr/winter97/brashear.html> [Accessed December 5, 2010].

<sup>107</sup> European Commission. “CARDS Assistance Programme: Former Yugoslav Republic of Macedonia 2002-2006.”

<sup>108</sup> European Commission. “Communication from the Commission to the Council and the European Parliament Commission. “Opinion on Albania’s Application for Membership of the European Union.”

<sup>109</sup> European Commission, Communication from the Commission to the European Parliament and the Council. “The Former Yugoslav Republic of Macedonia 2009 Progress Report.”

## CHAPTER VII

### ASYLUM REFORMS

The establishment of asylum systems in the EU membership aspiring Eastern Europe countries (EECs) represents a process guided by EU conditionality (Byrne 2003: 343). Until the *2005 Hague Programme Action Plan* and the *2007 Green Paper on the Future of the European Asylum System* (hereafter 2007 Green Paper), EU membership conditionality aimed at assisting EECs to set asylum systems compatible with the 1951 Geneva Convention on the Refugee Status and its 1967 New York Protocol on the Status of Refugees (hereafter 1951 Geneva Convention). However, with the 2007 Green Paper and its fundamental principle of “solidarity and burden sharing,” it became clearer that the EU expects from its aspirants the establishment of asylum systems that would contribute to solidarity and burden sharing. In order to be able to carry such a task, EE countries need asylum systems compatible with those of the EU countries as well as policies consistent with the common European asylum policy. However, in some of the EE countries, these institutions continue not to serve any domestic need.

The EU interests in the Balkans asylum systems have shifted from initial concern with regional peace and stability that would prevent masses of refugees to seek refuge in the EU member countries to the establishment of asylum systems that would prevent migration through the region to the EU member countries (Feijen 2007). Such policies have been associated with the conflicting dichotomy between principles of human rights and EU internal security (Peshkopia 2005a, 2005c). Apparently, the EU has tried to resolve this contradiction by establishing a common European asylum system (Thielemann 2008). It is easily conceivable that the EU membership aspiring countries need to establish asylum systems of international standards. That would make their asylum system easily adjustable to the EU’s after their accession.

Thus, the EU has increasingly linked the establishment of asylum systems in the Western Balkans with its accession strategies (Feijen 2007; Byrne 2003). In setting the criteria that EU aspirants should fulfill, in its *Agenda 2000: For a Stronger and Wider European Union* (hereafter Agenda 2000) the European Commission foresaw an annual

opinion on the progress of candidate countries, including asylum and migration as part of justice and home affairs. For the Western Balkans, developing asylum systems became part of the Stabilization and Association Agreements (SAA) from the launch of the Stabilization and Association Programme (SAP), May 1999, and rests in the chapter on justice and home affairs. The annual progress reports assess countries' progress in asylum and migration, and the Commission releases recommendations on asylum and migration issues which national governments need to address.

The Treaty of Amsterdam, 1997, envisions the EU as an area of freedom and security. As such, the EU views its enlargement as expanding this area, and requires the EU membership aspiring countries to develop laws, institutions, and rules compatible with those that underpin and promote EU freedom and security. Although the EU *acquis communautaire*, as a cornerstone of the Treaty of Amsterdam, is only legally binding to EU member states, the 1995 European Council in Madrid stipulated that candidate countries should transpose the *acquis* to their national legislations. Such a requirement represents a shift from the initial requirement for potential candidate countries only to harmonize and align their legislation with the *acquis*, to simply copying the “minimum standards” of the emerging common European asylum system.<sup>1</sup>

The postsocialist Balkan countries are located on the Balkan Route, the transit route of illegal immigrants from the Middle East and Central and Eastern Asia to the EU territory (Peshkopia 2008b; Peshkopia and Voss 2011). The economic hardship of postsocialist reforms and the Yugoslav ethnic wars of the 1990s caused massive fluxes of refugees and economic migrants. In addition, the atrocities of the Yugoslav wars and the carefully crafted policies of ethnic cleansing produced large numbers of internally displaced persons (IDP), and many of them continue to be potential refugees to the EU in attempts to escape poor living conditions in refugee camps and improvised shelters in Bosnia and Herzegovina, Croatia, Kosovo, and Serbia. Thus, the very same socioeconomic conditions made the Balkans both refugee and illegal migrant countries of origin and transit route. Countless illegal economic migrants, mainly from Eastern Turkey, Iraq, Iran, Pakistan and China, have transited the Balkans toward EU countries during the last two decades (Morrison and Crosland 2001).

Since few of the illegal migrants and refugees are interested in staying in the Balkans, but simply transit through its countries toward the EU, the governments in the region did not put serious efforts in thwarting this influx. Arguably, for the newly emerging democracies in Eastern Europe, institutional reforms in the area of asylum add unnecessary strain in their already weak economies and social welfare systems (Peshkopia 2005a,b,c; Byrne 2003; Nyiri, Toth and Fullerton 2001; Anagnost 2000; Lavenex 1998). Some authors have also argued that the EECs' resistance to build asylum system has been provoked by the fear that the EU asylum policies tend to turn these countries into a "buffer" zone for illegal migration flowing through them toward the EU territories (Byrne 2003; 2002; Byrne, Noll and Vedsten-Hansen 2002a,b; Stola 2001: 90-94); however, I continue to argue as before (Peshkopia 2005a,b,c) that indifference rather than rational opposition has prevented Balkan leaders from conducting asylum-related reforms. In both cases, however, the EECs have yielded to the EU demands to establish asylum systems which serve no domestic needs. The Albanian asylum system has gone through dramatic developments. In the arch of three years, it went from the outstanding efforts to manage the massive refugee influx of Kosovars during the 1999 Kosovo War, to the collapse of the system in 2002 due to mismanagement and curbing government interest asylum policies. The Macedonian case shows a similar reluctance by the domestic leaders to advance with the asylum reform while the country faces more pressing issues.

However, most of the postcommunist Balkan countries have now established formal asylum systems (Feijen 2007). This chapter shows how EU membership conditionality has affected such outcomes. I describe the developments in asylum systems in Albania and Macedonia, and analyze how the effects that changes in domestic leaders' interests and EU policies have impacted the asylum reforms in both countries.

### **Asylum in Albania: The Politics of Oblivion and Obedience**

Communist Albania never signed the 1951 Geneva Convention, thus refusing to become part of the international system of refugee protection. Indeed, as the country was becoming more isolated, it did not even need an asylum system. The last wave of refugees occurred in 1949 when the defeated Greek communist guerrilla entered Albania, only to be transferred quickly to other countries of the Soviet Bloc. For the rest of the

communist reign, the only refugees to enter the country were Albanians from the former Yugoslavia seeking to escape the Yugoslav anti-Albanian policies. The deeply suspicious regime of Tirana used to relocate those refugees in remote communities under permanent control of local authorities. Fearing refugee flows from Kosovo, especially during the violent riots in the Kosovo capital Prishtina in March-April 1981, the intention of the Albanian communist regime was to make Albania an unattractive country for refuge.

With the opening of the country in 1991, one of the obvious signs of the Albanian eagerness to break free from the communist self-imposed isolation was its adherence to international institutions and organizations. That popular mood was reflected in the rush of the newly elected Albanian authorities to acquire membership many international organizations. As a result, in December 1991, Albania signed the 1951 Geneva Convention. The signature remained a political gesture since it did not trigger immediate policy change on refugee protection.

Chaotic Albania of 1991-2001 was center of all types of trafficking and smuggling flowing from the geopolitical East (Eastern Europe, former Soviet Union, Turkey, the Middle East, and Central and Far Asia) to the geopolitical West. Streams of illegal immigrants entered every day from the Albanian-Greek and Albanian-Macedonian borders toward the Albanian coasts. From there, Albanian gangs smuggled them across the Adriatic Sea to Italy on powerful speedboats. Immigrants included Turkish and Iraqi Kurds, trafficked girls from Moldova and Ukraine, Pakistani countrymen, Iranian from all social classes, young Chinese, and a mixture of rural Albanians. With the Albanian authorities silent—perhaps encouraging human smuggling in order to diminish political pressure from unemployed masses during periods of difficult reforms—the efforts of the Italian coastguards during the 1990s proved to be insufficient to disrupt the Balkan route (Peshkopia 2008b; Peshkopia and Voss 2011).

The idea that foreign citizens could seek asylum in Albania while Albanian citizens were seeking asylum in other countries sounded strange to Albanian authorities and public alike.<sup>2</sup> That's why United Nations High Commissioner for Refugees' (UNHCR) efforts during 1991-1997 to persuade the Albanian governments to establish an asylum system could not produce any results before the country's process of drafting a new constitution 1997-1998. After the rocky years of the *Partia Demokratike* (PD) rule

that ended with the turmoil of the 1997 and the *Partia Socialiste* (PS) victory in July 1997, the new ruling elite wanted to demonstrate to country's international partners that they have abandoned their Leninist legacy and sought to fully integrate the country in the international community. Thus, for the first time, Albania recognized the right of foreign citizens to have asylum in its territory with its new Constitution that entered into force on November 28, 1998. Article 40 of the Constitution states that "foreigners have the right of asylum in the Republic of Albania according to law."<sup>3</sup> On December 14, 1998, *Kuvendi* approved the Law on Asylum. Several months after, on April 19, 2001, *Kuvendi* approved the Law on the Guard and Control of the State Border, and on May 27, it approved the Law for Foreigners, completing the legal foundations for a modern asylum and immigration system.

The Law on Asylum was drafted with the close cooperation of UNHCR Bureau of Tirana (BoT). The law generally met the 1951 Geneva Convention's criteria of refugee definition, refugee status determination (RSD), and refugee protection. It recognized the 1951 Geneva Convention's definition of refugee (Art. 4) and affirmed the concept of temporary protection for humanitarian reasons (Art. 5). The law also reflected the 1951 Geneva Convention's principle of *non-refoulement* (Art.7 and Art.15/2/a). Articles 12/3 and 15/2/b recognized the right of those who have been granted asylum status to acquire labor and residence permission and social rights at an equal level to Albanian citizens.

The law designed *Zyra për Refugjatë* (ZpR) [Office for Refugees] as the institution that conducted asylum seekers' applications and interviews. The ZpR, was composed of five civil servants, also served as a collegial decision-making body (Art. 17). The rejected asylum seekers had the right to appeal to *Komisioni Kombëtar për Refugjatë* (KKR) [National Commission for Refugees], an eight member committee with the participation of the government asylum issues-related agencies, and two NGOs – *Dhoma e Avokatëve* [Albanian Bar Association], and *Komiteti Shqiptar i Helsinkit* [Albanian Helsinki Committee] (Art.19). *Komisioneri Kombëtar për Refugjatë* [The National Commissioner for Refugees] was the head of the entire asylum system. *Komisioneri Kombëtar për Refugjatë* chairs both ZpR and KKR, but could not vote in the KKR in cases of refugee appeals against ZpR's decisions (Art.19/8).

Although the Law on Asylum has been considered as one that fits the international criteria, loopholes still loomed. For instance, Article 23/3 of the law stipulated the obligation of the ZpR to accord a state-paid lawyer to asylum seekers. That was a major development compared to asylum laws of other Balkan countries. Yet it was unclear who would pay for lawyers, and the ZpR itself had no resources for such expenditures, especially during the period 1999-2002 when the ZpR was financed by annual UNHCR programs.<sup>4</sup>

Even before the Law on Asylum was approved in June 1998, the ZpR was established as a small unit within the *Ministria e Pushtetit Vendor dhe Decentralizimit* (MPVD) [Ministry of Local Government and Decentralization], with the main purpose of tackling a minor refugee crisis triggered by ongoing skirmishes in Kosovo. The establishment of the ZpR represented a quick-fix without any legal underpinning and an undefined status. In March 1999, soon after the Law on Asylum was approved, roughly 450,000 Albanian Kosovars entered Albania and Macedonia forced by a Serbian brutal policy of ethnic cleansing conducted mainly by Serbian paramilitaries, government security forces and military units. Their methods included rapes of Albanian women, executions of civilians, looting of Albanian houses and properties, and forced expulsion. An NATO military air response ensued to stop Serbian massacres, and a large international effort began to help both countries dealing with the humanitarian crisis. The Albanian government granted to Kosovar refugees the status of temporary protection, the first Albanian legal action in refugee protection. As the majority of Kosovar refugees returned to their homes along with NATO troops in June 1999, few the remaining became the major preoccupation of the ZpR during the rest of 1999 and most 2000. However, during 2000, the ZpR began to proceed with individual applications, and some rudimentary procedures of refugee status determination (RSD) have since been developed. However, in spring 2001, a minor refugee crisis from Macedonia caused by military clashes between the Albanian *Ushtria Çlirimtare Kombëtare* [National Liberation Army] and the ethnic Macedonian dominated security forces interrupted again the development of the ZpR's normal functioning.

During the year 2000, the activity of the ZpR declined and government interest switched to more pressing issues. Two sequent elections, the local elections in October

2000 and general elections in June 2001 turned the focus to domestic problems. The PS victory in the 2001 general elections was followed by a power struggle within the socialists themselves, and only by summer 2002 the country began to implement some reforms. Asylum reform was low in ruling elites' priorities during that period. With the consolidation of power within the PS, the newly re-elected Prime Minister Fatos Nano seized the cause of the EU membership for the country, and returned to reforms that would facilitate Albania's road toward the EU. In November 2006, Albania and the EU signed the agreement for the readmission not only of its own citizens but also of the third country citizens who have been denied asylum or refugee status in the EU countries, and who have been proved to have entered the EU from Albania.<sup>5</sup>

During the period October 2001-April 2002, the ZpR struggled for its survival and recover past administrative blunders.<sup>6</sup> The work focused on both drafting and promoting legislation that would make the Albanian asylum compatible with requirements of the 1951 Geneva Convention, and undertook such initiatives such as the prescreening process, a procedure of interviewing police detained illegal migrants to determine whether they were refugees or economic migrants.<sup>7</sup> The ZpR also participated in Albania-EU task force committees for assessing Albania's policy progress toward the Stabilization and Association Agreement. The ZpR's effort to reach refugee protection standards stipulated by the EU were guided by UNHCR, not the Albanian government. Finally, the awkward administrative situation of ZpR ended on April 30, 2002, when the *Ministria e Pushtetit Vendor dhe Decentralizimit* (MPVD) [Ministry of Local Government and Decentralization] ordered the suspension of the ZpR's activity. The UNHCR BoT took over some of ZpR's functions such as the reception of new asylum applications, and the assistance of those few individuals and families who were either under the RSD process or were leftovers from the Kosovar massive influx of 1998-1999.

In October 2001, the delayed Albanian Task Force on Asylum was established with the participation of domestic and international actors. The Task Force was in charge of drafting by-laws to fill the remaining legal gaps in issues of refugee integration. Three by-laws on education, health care, and employment, drafted in spring 2002, were incorporated into the law on integration and family union for persons that have been granted asylum status in the Republic of Albania, approved by *Kuvend* in June 2003, and



entered into force on August 19, 2003. Similarly, the National Commission for Refugees was constituted in its first meeting only by early November 2001, almost two years after the Law on Asylum stipulated its activity. The RSD procedures were established according to the law, and a joint project between UNHCR, the ZpR and *Paqe Përmes Drejtësisë* (PPD) [Peace through Justice], a local NGO, was settled to make available legal assistance for refugees and asylum seekers.

The ZpR enjoyed a wide range of autonomy since most of its decisions did not need to be endorsed by the respective minister, which also led to abuses by irresponsible or corrupted public servants. In an attempt to address administrative shortcuts, the minister of local government released a guideline for an internal reform of the ZpR that resulted in its suspension on April 30, 2002. But the reform went beyond the guideline, changing the location and the name of the institution as well. By April 2003, the ZpR was transferred to the *Ministria e Rendit Publik* (MRP) [Ministry of Public Order], now *Ministria e Brendëshme* (MB) [Ministry of Interior]. Indeed, that was a necessary step, since the RSD process more closely linked with police than with local governments. Finally, in October 2003, a decision of the Council of Ministers changed the name of the ZpR to *Drejtoria për Refugjatë dhe Nacionalitete* (DRN) [Directorate for Refugees and Nationalities], reflecting thus the new status of the institution within the MRP.

Before summer 2003, Albania did not have any official refugee reception center, and detained asylum-seekers were accommodated in private mansions rented by several NGOs financed by the UNHCR protection program. The implementation of a project to establish *Qendra Kombëtare për Azilkerkues* (QKA) [National Center for Asylum Seekers] the first asylum seekers' reception center in the country began in October 2001. The issue of refugee and asylum seeker accommodation had been a concern for both the Albanian authorities and UNHCR. Usually, the detained people who were caught by the police traveling illegally through Albania were kept in police stations without any legal case; even the police were confused about what their legal status. Although Albanian law punishes illegal border crossing, the fact that tens of thousands of Albanians were doing it on daily bases continued to perplex the Albanian authorities on the real meaning and application of such a law. There were no food or hygienic supplies provided by the MRP, thus, detained people often remained in the mercy of policemen. Because of the sluggish

cooperation between the ZpR and UNHCR with police, the detained people were frequently obliged to live under terrible conditions for several days. In order to relieve the detainees' conditions, UNHCR provided some local NGOs with funds to arrange the accommodation of asylum seekers in private-owned houses. However, UNHCR viewed the final solution of the problem with the establishment of a refugee reception center that would shelter asylum seekers from the moment that an asylum request is received until the final decision. The Albanian government offered an old military building in Babrru, outside of Tirana. The construction of the reception center was supervised by UNHCR, and the entire project was financed by the European Commission in implementation of the EU High Level Working Group's (HLWG) Action Plan on Asylum in Albania and the Neighboring Region. The total amount was 49, 616, 203 Albanian Lek (roughly €350, 000), with the Albanian government covering only a small portion of costs for telephone and utilities. QKA opened in July 2003. In February 2010, there were 69 recognized refugees and 29 asylum applicants.<sup>8</sup> Most of the recognized refugees are remnants of the Kosovar refugee wave of the spring 1999, indeed, the same that were under the ZpR protection in 2002.<sup>9</sup>

However, the DRN remained volatile. It underwent another restructuring in 2006 which left it with three officials instead of five, undermining its capacity to implement the action plan for asylum and to properly process asylum applications.<sup>10</sup> From that reorganization, the DRN became *Departamenti për Shtetësi dhe Refugjatë* (DShR) [Department for Citizenship and Refugees]. On November 10, 2010, the European Commission (EC) noted that the institutional and legal framework has been put in place and a new law on asylum that was adopted in 2009 and is “generally in line with EU standards.” However, the Commission warned that consistency needs to be ensured between the Law on asylum, the Law on integration and the Law on foreigners.” As the Commission acknowledged, “[t]he asylum system has sufficient human resources and capacity to deal with its current low caseload. However, in case of a higher influx of asylum seekers, the DShR would need additional and more specialized staff.”<sup>11</sup> One can easily conclude that the asylum institution in Albania stands formally as an institution that could treat asylum seekers and refugees, but there are very few asylum cases to proceed.

Another example of the Albanian government's reluctance to implement asylum policies is the way it conducted the so-called "prescreening process" from its inception in 2001 until it ultimately suspended its implementation in 2006. I explained in a following section, the concept of prescreening was offered by UNHCR as a compromise between the international obligations of EU member countries and their need to prevent migration influxes.<sup>12</sup> Prescreening aimed at identifying asylum seekers, trafficked human beings, and illegal migrants among undocumented people detained by border police. The implementation of the prescreening policy aimed at keeping the EU member countries to continue to regularly process asylum-seekers while putting in a fast track of rejection cases that seemed openly abusive. Originally, prescreening was conceived as only an EU policy, thus implemented only by EU member countries.<sup>13</sup> However, both the EU and UNHCR have agreed to implement such a policy also in Albania.<sup>14</sup>

The process of prescreening began when the border police informed the asylum institution in the country of foreigners detained by police. In such cases, a joint team of ZpR/DRN, UNHCR and International Organization of Migration (IOM) departed immediately to the site of detention. After the interview, those who sought asylum or refugee status were sent to the QKA Babrru; those qualified as trafficked women were sent in their reception center in Linza; while those who did not qualify and/or were not interested in seeking asylum were sent back to the country from where they entered Albania. Until 2004, the detained undocumented foreigners were kept in police station. Later, five reception centers were built in such border crossing stations such as the Rinas airport; Bllatë; the port of Shëngjin, Lezhë; and Tre Urat and Sarandë, on the Albanian-Greek border. Although those centers were to shelter detained persons, the police adopted most of these facilities for their own use, unrelated to detention.<sup>15</sup>

The funding of the prescreening project came from the EU Community Assistance for Restructuration, Development and Stability (CARDS) Program. Originally, the process was implemented by the ZpR/DRN, UNHCR, and IOM. However, in May 2005, the process was transferred to the *Drejtoria e Policisë Kufitare* (DPK) [Directory of the Border Police]. From this moment, DRN lost access to detained people in the border crossing points. With that change, the DRN also lost its responsibility to transport the detained people to Babrru or Linza. Police was neither able nor sufficiently trained to

conduct pre-screening interviews with people undocumented foreigners. Nor was police interested to engage personnel and vehicles to transport asylum seekers and/or trafficked human beings to their reception centers in mainland Albania. Allegedly, most of the cases of people detained in the border were sent back to the country where they are trying to access the Albanian territory. Ever since, the number of detained people sent to the QKA, Babrru, and *Qendra Kombëtare për Pritjen e Viktimave të Trafikuara* (QKPVT), Linzë [National Reception Center of Trafficking].

The PD electoral victories of 2005 and 2009 did not contribute in changing the pace of the Albanian asylum reform. In its 2007 Progress Report, the European Commission emphasized that “[t]here has been limited progress on asylum issues,” that “no coherent single asylum strategy is yet in place,” and that “progress on the planned review and amendment of the legal framework for asylum has been slow.”<sup>16</sup> On May 2008, the EU Commission handed to the Albanian government the Roadmap on visa liberalization. The document contained four chapters: documents security; illegal migration; public order and security; and issues of foreign relations and fundamental rights.<sup>17</sup> The Roadmap links the establishment of appropriate asylum procedures with visa liberalization. It asks the Albanian government to adopt and implement asylum legislation in line with international standards (1951 Geneva Convention with New York Protocol) and the EU legal framework. But given the short time period before the release of the 2008 Progress Report, one cannot expect much.<sup>18</sup> However, the revision of the Law on Asylum in January 2009 in order to incorporate European and international standards marked a major breakthrough in the Albanian asylum system. Although the European Commission noted in its 2009 Progress Report a range of implementing measures that still needs to be adopted to complete the legal framework, particularly in terms of health care, family reunion, social protection, education and housing, good progress was reported with regard to asylum. Albania’s asylum system continues to only partially meet its policy objectives.<sup>19</sup>

In November 2009, Albania was excluded from the first round of the EU visa liberalization with the Western Balkans exactly because it had met its objectives only partially. That failure put the Albanian government under heavy criticism from the PS opposition since visa liberalization and the EU candidate status were central promises of

both *Partia Demokratike* (PD) and *Partia Socialiste* (PS) during the electoral campaign for general elections in summer 2009. Under the growing pressure of the opposition, the government felt the need to succeed both with visa liberalization and the EU candidate status, and undertook vigorous efforts to fulfill the EU conditions. Those efforts were recognized by the Commission which, in its *Opinion on Albania 's application for membership of the European Union*, November 2010, assessed that Albania has made progress in a number of key areas of this chapter in the framework of the visa liberalization dialogue with the EU, including asylum.<sup>20</sup>

Table 7-1 traces the developments in the Albanian asylum system.

### **Asylum in Macedonia**

During the 1990s, the asylum system in Macedonia had been followed the practices set in place during the Yugoslav period. However, similar to the Albanian case, Macedonia was mainly a country of origin and transit of refugee and illegal migrants. During that period, the main concern of Macedonian governments was to assure the consolidation of the country as the homeland of the Macedonian people, to acquire international recognition, and to escape the Yugoslav wars. These interests seem to perfectly overlap with the EU interest in a stable Macedonia. The same remained true also during the first years of the 2000s. But in the aftermath of the 2001 conflict, the establishment of asylum capacities for foreigners was not a high priority, although the country became a refuge for refugees from the Ashkali, Egyptian and Roma communities from Kosovo.<sup>21</sup>

Macedonia signed the Stabilization and Association Agreement with the EU in spring 2001 when the western part of the country was swept by an armed ethnic conflict. Some authors have commented that the Agreement seemed to be a reward for Macedonia's constructive role during the Kosovo crisis.<sup>22</sup> However, it can also be interpreted as a guarantee by the EU to both the Macedonian government and Albanian guerrillas that EU interest rested in a united, democratically stable Macedonia.<sup>23</sup> On the other hand, EU seemed to initially understand the difficult reconstruction period of the country, and, in the area of asylum, and asked for the achievement of only minimum standards such as a new asylum law including adoption of the secondary legislation and

TABLE 7.1 DEVELOPMENTS IN ALBANIAN ASYLUM REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1991-1997		0	0	<b>No reform.</b> The EU was interested in thwarting waves of undocumented people crossing its border and Albania was a main gateway for people from the Middle East, and Central and Eastern Asia being smuggled in the EU territory. Albania was not interested in building g any asylum system since no one from the undocumented people who were travelling through Albania toward the EU territories sought refuge in the country.
1998		0	+	<b>Good progress.</b> With drafting the new constitution, the Socialist-Centrist coalition wanted to demonstrate to international partners its commitment to country's international obligations. The real interest in the asylum reform was not a literal establishment of an asylum system, but only the establishment of a basic legislative framework that would be considered a progress in country's asylum policy. Meanwhile, the EU policy continued to focus on Albania protecting its border.
1999		+	+	<b>Good progress.</b> This period represents the only time when both the EU and Albanian government were interested in establishing asylum system. The EU interest came from its project to build a common European asylum, system with Albania as part of that system. The Albanian interest came from the need to handle the Kosovar refugee influx and potential refugee influx from Macedonia.
2000		+	0	<b>No reforms.</b> Although the EU interests on the Albanian asylum system was as high as in the previous period, the local elections of October 2000 and general elections of July 2001 made the government focus on major reforms, thus leaving the asylum reform outside its attention.
2001-2002		+	0	<b>Slow progress/system fails:</b> the crisis within the main partner of the ruling coalition, PS, reduced the interest of the government in some reform peripheral to both that domestic struggle and the containment of an increasingly aggressive opposition such as the PD. Ultimately, the government closed the ZpR.
2003-2008		+	0	<b>Insufficient/slow progress:</b> The prevalence of Fatos Nano in the internal struggle of PS returned the government interest in reforms. The EU-Western Balkans Meeting in Zagreb, November 2000 and the European Council of Thessaloniki, June 2003, renewed the Albanian hopes to join the Union, and the government began to follow the EU blueprint. The PD-led coalition that took over in 2005 followed the same path of reform, but the lack of domestic need for the asylum reform reduced government's attention to asylum related policies, and the Albanian asylum system remains weak.
2009-2010		+	+	<b>Good progress.</b> Only when the EU linked the asylum reform with the more tangible visa liberalization policy rather than the more distant EU membership did the Albanian government become interested in fully implementing asylum policies.

improvement of capacity to process asylum applications.<sup>24</sup> In addition, in contrast to Albania which was conditioned to sign a readmission agreement with the EU for both its citizens and third country citizens who have been smuggled in the EU through Albania, Macedonia was obliged to readmit any of *its* nationals illegally present in the territory of any EU Member State.<sup>25</sup> The stalemate in establishing an asylum system continued during the period 2002-early 2003, as demonstrated by the EC's Stabilization and Association Report released in March 2003.<sup>26</sup>

The first major development in the Macedonian asylum system was undertaken in July 2003 when *Sobranie* passed a new Law on Asylum and Temporary Protection (LATP), and the law entered to force in August 2003. The European Commission considered the law to be largely in line with EU standards, secondary legislation was required for proper implementation.”<sup>27</sup> LATP puts the asylum system within the authority of the *Ministerstvo za Vnatrešni Raboti* (MVR) [Ministry of the Interior]. During the second half of 2003, the Macedonian authorities began to work with UNHCR and other implementing partners in a series of joint meetings, information campaigns, detailed technical review and training programs on the EU *acquis*, the status determination procedures and the drafting of regulations and procedures. However, as always, the main goal was to find long-term solutions for existing refugees. By the end of 2003, 93 per cent of people in temporary protection, a reference of the leftovers from the mass influx of 1999 from Kosovo, had applied for asylum, a right conferred on them by the new law.

However, the RSD process was slow, leading us to the conclusion that simply the establishment of asylum capacities in Macedonia does not imply that such effective functioning.<sup>28</sup> As the EC's Analytical Report notes, the government commission which is the competent body for hearing appeals against first instance decisions on refugee status “remains untransparent [*sic*] and lacks independence.”<sup>29</sup> Mainly, the Commission emphasizes the lack of asylum-seeker reception centers and the lack of resources from the *Ministerstvo za Trud i Socijalna Politika* (MTSP) [Ministry of Labor and Social Policy] which is in charge of providing advice to refugees and ensuring inter-ministerial and inter-agency coordination on implementation of the Law. Indeed, after the huge influx of refugees in 1999, the number of asylum-seekers has decreased. In the first six months of 2005 only 11 persons applied for asylum. Yet further adjustment of legislation in order to

comply fully with the criteria and mechanisms for determining the responsible Member State (Dublin II) is needed.<sup>30</sup>

In 2004, the Macedonian government established a national CARDS Steering Committee that would supervise and coordinate the national CARDS project. The Committee is chaired by the State Secretary of MTSP and consists of members from *Ministerstvo za Vnatresni Raboti* (MVR) [Ministry for Internal Affairs], MTSP, *Ministerstvo za Pravda* (MP) [Ministry of Justice], *Vladiniot Sekretarijat za Evropski Prasanja* (VSEP) [Government's Secretariat for European Affairs], and *Ministerstvo za Nadvoersni Raboti* (MNR) [Ministry of Foreign Affairs]. The European Agency for Construction (EAR), the UNHCR, International Organization OF Migration (IOM) and International Centre for Migration Policy Development (ICMPD) have observer status. The policy went to implementation through two projects. The goal of the first project was the establishment of asylum institutional capacities. The first phase of this project was completed in May 2004 and represented the legislative and procedural foundations of the asylum system, including a review of the existing legislation and proposal for upgrading the National Action Plan to meet standards of the European Union *acquis*.<sup>31</sup> The second phase was funded by the EU agency EurAsylum, and had three objectives: (1) the implementation of the National Action Plan through continuous reviews; (2) recommendations and the efficient implementation of the agreed policies and procedures; (3) the revision of existing legislation, the identification of gaps, and recommendations for the adoption of primary and secondary legislation. The second project aimed at completing the Macedonian asylum system with a Reception Centre for Asylum Seekers.<sup>32</sup>

The implementation of asylum procedures in Macedonia is administered by the *Ministerstvo za Vnatresni Raboti* (MVR) [Ministry for Internal Affairs] through its Section for Asylum, which processes claims as the first instance central asylum authority. The second instance in the asylum procedures consists of the Governmental Commission for deciding in an administrative procedure in the second instance in the field of the interior, judiciary, state administration, local self-government and issues of religious character, and it deals with cases of appeals from rejected asylum seekers. The Commission is composed of seven members, one from the Ministry of Justice, four from



the Ministry of the Interior, one from the Commission of Religious Communities, and a President who is a high-ranking official from the General Secretariat of the Government. Eight new asylum applications were registered in 2006 and no case was recognized under the 1951 Convention. However, since its creation, the Section for Asylum has almost exclusively dealt with claims from Kosovo minorities and, cumulatively, less than 2 % of these claims have been recognized under the 1951 Convention.<sup>33</sup> In 2008, the Administrative Court replaced the Supreme Court as the last instance for asylum cases. It has not yet issued any decision on any asylum case.

The European Commission's *Analytical Report for the Opinion on the Application from the Former Yugoslav Republic of Macedonia for EU Membership*, November 2005, looked over the issue of asylum reform, and so did its *Commission Opinion on the Application from the Former Yugoslav Republic of Macedonia for Membership of the European Union*, November 2005.<sup>34</sup> However, the EU returned to the issue of asylum reform in 2006 when, in its *Decision on the Principles, Priorities and Conditions Contained in the European Partnership with the Former Yugoslav Republic of Macedonia and Repealing Decision*, the European Council set as a mid-term priority "the operation of asylum procedures which are fully in line with international and European standards, including a reformed appeals system."<sup>35</sup>

The Commission's 2006 Progress Report on Macedonia explicitly mentioned the lack of significant progress in the area of asylum, yet considers the state of asylum system in Macedonia as "moderately advanced."<sup>36</sup> Earlier that year, the Government issued its *National Programme for the Adoption of the Acquis Communautaire* in March 2006. For its short-term priorities on asylum, it undertook to earmark funds from the national budget to address the needs of asylum seekers in education, health, employment, juvenile reform, and professional training.<sup>37</sup> By the same token, the 2007 Report continues to be critical of both the institutional functioning and the asylum policy implementation, concluding that Macedonia as "not yet sufficiently prepared."<sup>38</sup>

As in the case of other Western Balkan countries, the EU linked visa liberalization with Macedonia's performance in asylum reform. The Roadmap on EU visa liberalization for citizens of Macedonia, which was handed out to Macedonia on May 2008, stipulates

that Macedonia should “implement the legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and the EU legal framework and standards;” and “provide adequate infrastructure and strengthen responsible bodies, in particular in the area of asylum procedures and reception of asylum seekers.”<sup>39</sup> The opening on a new reception center for asylum seekers and the replacement of the Supreme Court by the Administrative Court as the last instance for asylum cases served the country an overall positive assessment in the European Commission’s 2008 Progress Report. The Report concludes that, “[i]n this area, legislative alignment is advanced and development of the administrative capacity is well on track.”<sup>40</sup> Furthermore, in the 2009 Progress Report, the Commission reported “good progress in the area of asylum,” even seeing Macedonia as “advanced” in the area of asylum. As steps that were undertaken over the last years, the Report mentions a new Law on Asylum and Temporary Protection the “brought national standards even closer to European ones.” The EC also praised the fact that the Government Commission hearing appeals against first instance decisions on refugee status was abolished, and the administrative court became the final instance body on refugee status.<sup>41</sup> The same evaluation Macedonia received from the 2010 Report.<sup>42</sup> Along with the progress in the other three policy areas stipulated for visa liberalization agreements with the EU, progress in asylum reform rewarded Macedonia with the visa liberalization agreement in November 2009.

The tracing of the Macedonian developments in the area of asylum shows that, similar to Albania, the lack of tangible incentives created by the more distant EU membership plays less role than the more tangible and immediate visa liberalization. Yet, the country did make good progress in 2005, the year when an EU decision about its EU candidate status was expected. Then, the asylum reform stalled again until the introduction of the Roadmap in 2008. Then, Macedonia ‘scored’ good progress in the very important year 2009 when both the visa liberalization agreement and a European Commission recommendation for opening accession negotiations with Macedonia were expected.

Table 7-2 summarizes the Macedonian developments in the area of asylum.

TABLE 7.2 DEVELOPMENTS IN MACEDONIAN ASYLUM REFORM

PERIOD	SITUATION	EU INTERESTS	DOMESTIC LEADERS' INTERESTS	REFORM RESULTS
1991-2003		0	0	<b>No reform.</b> The main EU interest during the 1990s and early 2000s was the political stability of the country, so Macedonia doesn't turn from a predominantly country of transit in a refugee country of origin. By the same token, Macedonia's elites were focused in dealing with the simmering—and later erupting—ethnic tensions.
2004-2005		0	+	<b>Good progress.</b> After Macedonia returned to normality, the EU grew interested in expanding its concept of the common European asylum system in this country. On the other hand, the Macedonian Government was interested in undertaking some steps toward the asylum reform in order to boost country's chances for the EU candidacy status.
2006-2008		+	0	<b>Insufficient/slow progress.</b> Although the EU interests on the Macedonian asylum system its delay in opening accession negotiations with Macedonia curved the Macedonian interest to implement reforms that did not interest it. Hence, the European Commission 2006, 2007, and 2008 Reports for Macedonia's progress in reform in the asylum sector was "insufficient."
2009		+	+	<b>Good progress.</b> Apparently, the stipulation of progress in the asylum reform and the hopes that the EU would decide to open accession negotiations with Macedonia, shifted its leaders' interests toward progressing with the asylum reform, hence the European Commission's assertion that the country has made 'good progress.'
2010		+	+	<b>Good progress.</b> The process of accession negotiations has helped to maintain the interest of the Macedonian ruling elites in the asylum reform, hence the country has made "good progress."

### **A Consociational Interpretation of the Albanian and Macedonian Asylum Reforms**

A consociational interpretation of Albanian and Macedonian asylum reforms is a tricky enterprise since the EU guidelines and principles relating to refugee status determination are clear, but decisions are taken at the national level. While the European Asylum Support Office (EASO) established in 2010 is the first institution at EU level working to strengthen and develop cooperation in the asylum field among the member countries, EASO is set to have no direct or indirect powers in refugee status determination.<sup>43</sup> Of course, the EU's common European asylum system is being promoted by Council's decisions and European Parliament's regulations in an institutional setting established by and functioning through consociational practices. However, breaches of compliance by member countries to harmonize asylum legislation and procedures shows the relevance that asylum policies at national level.

With the Treaty of Amsterdam, asylum policies of member countries, along with immigration and external border control, are becoming *communitarized*. These policies along with the Schengen *acquis* have been transferred to the Justice and Home Affairs pillar. However, it seems difficult to persuade member states to give up refugee protection prerogatives which, as part of population control, it has been argued to be the very *raison d'être* of the state.<sup>44</sup> Finally, it was agreed that the five year transition would occur under the conditions of unanimous decisions among the member states, and only after that period co-decisions and qualified majority voting would be practiced. The agreement came under the provision that the EC would previously adopt legislation defining the common rules and basic principles governing the asylum field. Denmark decided to opt out of this policy, while Great Britain and Ireland chose to only partially participate in the new EU asylum policy.

The shift from the national asylum system to the common European asylum policy shows the EU intention to implement consociational practices in managing this policy sector. Through the new policy, the EU scrambles to resolve the contradiction between, on the one hand, the need of its member countries to curb uncontrolled refugee and migrant influxes in their territories, and, on the other, the need of its member countries to continue to respect their international commitments. The European Commission's 2007 Green Paper almost exclusively puts the principle of solidarity and burden sharing at the

center of that system. However, since previous EU burden sharing efforts have failed, the Green Paper shows that a shift to policies that would emphasize proportional distribution of asylum seekers throughout the entire EU space would be impossible without emphasizing the principle of solidarity and burden-sharing.

Solidarity is a founding norm of the European Union and all its member countries have promulgated in one way or another such a principle in their national constitutions. From Schuman and Adenauer to Blair and Merkel, the EU politics have been characterized by the combination of the pursuit of national interests and the commitment to push forward toward a politically more integrated Community. Schieffer suggests that solidarity should be seen as one of EU's most accepted norms since it is shared by the domestic constitutions of its member countries (cf. Thielemann 2003). Burden-sharing is a form of solidarity and, in the case of the common European asylum system, burden-sharing is understood as intrinsic to solidarity.

The core document of the common European asylum policy is the Council Regulation (EC) No. 343/2003 (OJ 050/2003 (hereafter Dublin II) which amended the 1990 Dublin Convention. Along with the European Refugee Fund (ERF) which represents one of the three pillars of the common European asylum policy, and the European Asylum Support Office (EASO) which represents the second pillar, the Dublin II constitutes the other pillar.<sup>45</sup> Both these documents emphasize solidarity albeit in different ways. Thus, while EFR is more unambiguously dedicated to solidarity by tending to proportionally allocate funds to countries that face relatively more people who seek protection than other EU member countries, the Dublin Convention and Dublin II emphasize the fact that member state of the first entry ought to be responsible for an asylum claim, and that asylum seekers who have moved to seek asylum in another EU country should be sent back to the country where they entered the EU. Other EU documents have emphasized solidarity and burden-sharing of asylum seeker weight even more explicitly.<sup>46</sup> As the *Common Statement by Belgium, Hungary, Poland, Denmark and Cyprus on Immigration and Asylum* of November 30, 2010 states, “[i]t is vital to ensure a common area of protection that is based on mutual trust between Member States.”<sup>47</sup>

However, there are major problems with compliance as EU member countries seem inclined toward refugee deflection policies (Byrne 2003; Noll 2003; Thielemann).

As an *Opinion of the European Economic and Social Committee* (EESC) notes, “[t]he CEAS [common European asylum system] is being undermined by the tendency of Member States to limit the harmonisation of legislation and national practices.”<sup>48</sup> Indeed, as the Opinion points out, such a harmonization is not a problem of asylum policy but it is “the main instrument through which the benefits of the CEAS will be made tangible.” It has been hoped that harmonization will decrease the administrative and financial pressure on some Member States and guarantee a higher level of protection for asylum seekers, at least in the initial phase. The so called Qualification Directive—which is one of the four legal instruments of the EU *acquis* in the asylum field, with European Dactyloscopy (Eurodac), Dublin Regulations and the Long Term Residents Directive being the other three instruments—laid the ground for standardized asylum procedures throughout the member states.<sup>49</sup>

Noll (2000: 285-316) has considered the efforts for a common European asylum policy as a strategy to minimize protection and maximize deflection of asylum seekers in the condition of the lack of both control over migration and an effective regional refugee burden-sharing. Further critiques have come from within the EU. For instance, the Opinion of EESC pointed out that, “[i]f harmonisation is to yield the expected results, it must not be based on the lowest common denominator of protection.”<sup>50</sup> In addition, it has been argued that some provisions in the April 2004 Qualification Directive could be used by the member states as a way of lowering their existing standards. Other observers have pointed out that, in some places, the Qualification Directive provides less in terms of protection than the Convention Relating to the Status of Refugees or the European Convention on Human Rights (Lambert 2006).

The EU *acquis* on asylum and migration represents the standardization of the asylum legislations and procedures throughout the EU member countries, and the EU conditionality on asylum and immigration consists on conditioning EU accession to candidate and potential candidate with meeting that *acquis*. The purpose of such an *acquis* transfer is to increase “the pool of states who meet common criteria to act as potential recipients for asylum applicants.”<sup>51</sup> Thus, there are strong incentives for the EU to condition to its candidate and potential candidate countries the establishment of asylum systems compatible with the emerging common European asylum system. Not only

would the new entrants be able to quickly adjust with the solidarity and burden-sharing tasks once they are within the Union, but they will also be able to participate in advance in such burden-sharing efforts, especially after the signings of the readmission agreements of their own and, in the case of Albania, third country nationals. In sum, Byrne (2003: 340) considers the *acquis* to be “a composite of piecemeal instruments which aim to establish minimum standards below which state practice should not fall.”

It is clear that the EU is strongly interested in the Albanian and Macedonian asylum reforms as extensions of the EU asylum reform.<sup>52</sup> Establishing asylum institutions in Albania and Macedonia would help the EU in several aspects. First, the readmission agreements allow the acceptance “upon application by a Member State and without further formalities” of their citizens who have failed to be recognized as refugees in any of the EU country.<sup>53</sup> Second, this strategy can be reinforced by declaring these countries as safe countries, thus making their citizens ineligible for asylum in the EU member countries. Third, if these countries develop modern asylum systems, they can serve to buffer critiques related to violations of the *non-refoulement* principle in cases of compulsory return of the rejected asylum applicants from these countries and third countries;<sup>54</sup> with a modern asylum system in Albania, the EU would justify the returning of third country asylum applicants that entered the EU through Albania back to this country, on the grounds that they can already seek asylum in Albania.

### **A Sectorial Interpretation of the Albanian and Macedonian Asylum Reforms**

The Albanian and Macedonian asylum reforms represent a unique case when the EU has to confront not the opposition, but the indifference, of its applicants to conduct that reform. It has been argued that the more geographically proximate states were to countries of origin the more probable that asylum seekers would succeed in entering their jurisdiction (Byrne 2003). Moreover, it has also been noticed that while asylum applications in western Europe declined by 40 percent between 1995 and 1999, for some countries in eastern Europe (Poland, Hungary) with extensive green borders along the EU, asylum application tripled by the end of the decade (Ibid). These data suggest that postcommunist Europe bears the potential risk of being inundated by waves of refugees and asylum seekers. In addition, arguably, the implementation of the asylum *acquis* in EU

aspirants from Eastern Europe would serve the deflection policies of the western states, and transfer uneven burden the eastern countries.

The data in Table 7-3 show that, except for Poland, none of the Eastern European countries that joined the EU in 2004 has experienced any increase in the number of asylum seekers. On the contrary, some of them like the Czech Republic and Romania have managed to curb their numbers to the rates of the year 1994. Also Slovenia and Slovakia have experience decreases in number of asylum seekers. The number of asylum seekers in Estonia and Latvia remain insignificant, but even the hike in asylum applications in Lithuania still leaves this country with a small number of them. Even Bulgaria and Hungary have received recently fewer applications than in some of the pre-accession years. As for Albania and Macedonia, the number of asylum applications in these countries, especially in Albania, is insignificant.

These data show that simply the fact of establishing asylum systems according to international refugee protection standards does not immediately turn EECs to refugee countries of destination. The improvement of refugee protection standards in EU aspirants from Eastern Europe has not made their asylum systems more attractive to refugees and asylum seekers. Rather, they continue to prefer Western European countries with more developed social programs and job opportunities. In the light of such data, we can conclude that there is no reason for fear of large numbers of refugees in Albania and Macedonia. Their governments' delays in complying with the EU asylum *acquis* reflects leaders' low interest in conducting reforms in policy areas that do not directly affect their citizens. Refugee crises such as the Kosovar refugee flows of early 1999 in both Albania and Macedonia might spark interests in refugee protection policies and institutions, but now, with most of the Balkans pacified, any violent ethnic conflict seems unlikely. The EU perspective of the Balkans has compelled the acceleration of reforms, yet some sectors with more impact on people's lives acquire more attention. In addition, the reluctance of the EU to open accession negotiation with Macedonia for several years after the latter acquired the EU candidate status pushed the EU perspective of the country to an unknown future and turned both country's leaders and its public anxious over whether or not they were treated fairly.<sup>55</sup> As for Albania, the country's government submitted the application for the candidate status in April 2009 under skepticism of some EU member



TABLE 7.3 ASYLUM APPLICATIONS IN POSTCOMMUNIST EUROPEAN COUNTRIES, 1994-2009

COUNTRY/YEAR	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Albania	–	–	–	–	–	–	–	–	–	–	36	30	20	30	10	–
Bosna & Herzegovina	–	–	–	–	–	–	–	–	–	–	454	150	70	570	100	50
Bulgaria	561	517	302	429	833	1,331	1,755	2,428	2,888	1,549	920	820	640	980*	750*	850*
Croatia	–	–	–	–	–	–	–	–	–	–	33	190	90	200	160	150
Czech Rep.	1,187	1,417	2,211	2,109	4,085	7,220	8,788	18,094	8,484	11,396	1,119*	4,160*	3,020*	1,880*	1,710*	1,260*
Estonia	–	–	–	–	23	21	3	12	9	14	6*	10*	10*	10*	10*	40*
Hungary	207	130	152	209	7,097	11,499	7,801	9,554	6,412	2,401	354	1,620*	2,120*	3,430*	3,130*	4,670*
Latvia	–	–	–	–	58	19	4	14	30	5	1	20*	10*	30*	50*	50*
Lithuania	–	–	–	320	163	133	199	256	294	183	28	120*	140*	130*	220*	210*
Macedonia	–	–	–	–	–	–	–	–	–	–	1,232	70	60	30	50	90
Montenegro	–	–	–	–	–	–	–	–	–	–	–	–	20	–	10	20
Poland	598	843	3,211	3,533	3,373	2,955	4,589	4,506	5,153	6,921	3,743*	6,860*	4,430*	7,210*	7,200*	10,590
																*
Romania	647	634	588	1,425	1,236	1,670	1,366	2,431	1,151	1,077	210	590	460	660*	1,170*	830*
Serbia	–	–	–	–	–	–	–	–	–	–	–	90	20	40	80	280
Serbia & Montenegro	–	–	–	–	–	–	–	–	–	–	40	–	–	–	–	–
Slovakia	140	359	415	645	506	1,320	1,556	8,151	9,700	10,358	2,916*	3,550*	2,870*	2,640*	910*	820*
Slovenia	–	–	38	72	499	867	9,244	1,511	702	1,100	323*	1,600*	520*	430*	240*	180*

Source: UNHCR. \*Number of asylum seekers in years when the country was an EU member

countries and domestic critiques that such a move was only an electoral strategy in the eve of the summer 2009 elections with little chance to succeed.<sup>56</sup>

Therefore, only policies that would shift the immediate interests of the Albanian and Macedonian leaders toward the asylum reform could make these countries progress in establishing efficient asylum institutions and procedures. The EU found such an opportunity with the agreements on visa liberalization. As many citizens of these countries connect the abstract idea of the EU as an area of justice, freedom and wellbeing, with the more tangible idea of visa-free movement throughout the continent, conditioning the latter would be more efficient than conditioning the former. Ultimately, the EU conditioned progress in asylum reforms in the visa liberalization agreements with both countries, and its progress reports for both 2009 and 2010 show that it worked. Both countries have been reported to have made good progress in their asylum reforms.

## Conclusions

The case of the asylum reforms in Albania and Macedonia brings evidence in support of the claim that, if an EU aspiring country is not interested in conducting a certain reform even when the EU conditions that particular reform, the progress in that policy area will be slow, and the institutions established through it will be weak and ineffective. The visa liberalization agreements implied that the beneficiary countries become safe third countries. Moreover, the EU officials have explicitly explained to governments and publics of these countries that, with the signing of the agreement, the chances for asylum recognition for the citizens of the beneficiary countries will no longer exist. Indeed, during the year 2010, authorities in several EU and other non-EU western European countries have faced waves of asylum seekers from Macedonia, Montenegro and Serbia, all of which met with negative response and expulsion.<sup>57</sup> Thus, combined with domestic asylum systems, the visa liberalization agreements allow EU member countries to reject *prima facie* asylum applications from the Western Balkan countries.

While we know that Albania's and Macedonia's progress in asylum reform as only one of the aspects of visa liberalization conditionality helped the country to reach the visa liberalization agreement, would it suffice for these countries to acquire EU candidate status? As a UNHCR protection officer writes, the EU *acquis* on asylum is the outcome

of a compromise regarding minimum standards reached by states which already had national asylum systems. For countries with embryonic asylum systems, the adoption of such complicated negotiated structures seems unnecessary. A simpler asylum system would be preferable. Basic asylum systems in line with international standards would be in accordance with the EU *acquis*, and would be less staff-intensive and more manageable for countries with limited resources (Feijen 2007). Therefore, it is expected that the current status of the asylum system, especially with the low number of applications in both Albania and Macedonia, is not a policy sector likely to determine the outcome of these countries' accession negotiations.

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<sup>1</sup> As Byrne (2003: 334) referring to Anagnost (2000: 396) points out,

For the CEEC and Baltic states, not only have their own ministry officials not had any influence in the creation of *the acquis*, that they now must implement, but with the notable exception of Lithuania, the asylum offices in applicant states are excluded from the formal asylum discussion under the accession process, which is tightly controlled by Ministry officials.

However, this is not the case of Albania in the 2001-2002 period when I led the Albanian asylum system. The OfR that I led was in charge of leading asylum policies and I have participated in the Albania-EU negotiations/progress assessment on behalf of the OfR.

<sup>2</sup> I was appointed National Commissioner for Refugees/Director of the Office for Refugees on October 4, 2001. I still remember how amazed people were when I used to tell them that I was the person in charge to grant asylum to foreigners in Albania. It was difficult for Albanians to comprehend that anyone would chose Albania as his place to refuge.

<sup>3</sup> The Constitution of Albania. Available from [www.kqz.org.al](http://www.kqz.org.al) [Accessed December 2004].

<sup>4</sup> Only during 2003, the government barely took over some expenses, including employees' stipends, but funds for legal assistance continue to be out of the question.

<sup>5</sup> Such agreements have been highlighted by then UNHCR Ruud Lubbers, when he proposed the EU "prong" of his three-pronged approach to a global solution of the refugee situation. Mr. Lubbers explained his proposal as follows:

Under the "EU prong", the UNHCR proposes separating out groups that are misusing the system, namely asylum seekers from countries that produce hardly any genuine refugees. These asylum seekers would be sent to one or more reception centres somewhere within the EU, where their claims would be rapidly examined by joint EU teams. Those judged not to have any sort of refugee claim would be sent straight home.

The limited number of recognised refugees among them would be shared between the EU states. There should be a strict time limit for the entire process. Readmission agreements between the EU and the rejected asylum seekers' home countries must be reached in advance so that people are not detained for months or years simply because they cannot be deported.

See Ruud Lubbers, "Put an End to Their Wandering." [Guardian.co.uk](http://www.guardian.co.uk), June 20, 2003. <http://www.guardian.co.uk/politics/2003/jun/20/immigration.immigrationandpublicservices> [Accessed March 2011].

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Indeed, Lubbers' EU prong became the blueprint of EU efforts to build a common European asylum system. See for instance Thielemann (2008). Moreover, note Lubbers' remarks in the following quote:

I am pleased that these proposals have found an echo in a recent communication published by the European Commission at the request of member states. The dialogue is continuing at the EU summit in Thessaloniki. We should not miss this opportunity to put in place a more balanced and equitable approach that safeguards the protection of refugees, promotes solutions and restores public confidence in asylum systems. This is one of the most urgent policy challenges confronting Europe today.

Ruud Lubbers, "Put an End to Their Wandering." *Guardian.co.uk*, June 20, 2003.

<sup>6</sup> I was appointed Albania's *Komisioner Kombëtar për Refugjatë* and Director of the ZpR on October 4, 2001, and arrived in the ZpR the same day. My superior, the minister of local government, told me flatly that the ZpR was the last thing in his priorities and that he wanted me to deal with it on my own. I discovered that my predecessor—who had left his job for another position with the Ministry of Justice—had withdrawn \$40,000.00 with no explanation, thus leaving the entire institution with no cash in its bank account. Indeed, the annual budget of the ZpR was a transferred fund from the UNHCR BoT, and represented a combination of UNHCR and EU contributions, while the Albanian government contributed only with the facility, an ugly workplace patched among the ruins of a rundown Chinese fair building of the early 1970s. It took three months for the MPVD to send an audit team only to reconfirm the embezzlement of the previous commissioner. Aware of the embezzlement, the UNHCR BoT decided to include the ZpR personnel in its payroll and directly financing its daily operations rather than transferring additional funds to ZpR's bank account. It is easily perceivable the frustration of public servants who operated within the administrative framework of a government agency but were financially dependent from an international organization.

The MLGD never pressed charges against the former commissioner Elton Nita, a member of the ruling Socialist Party. In February 2002, in a government organization, the minister of local government and decentralization Arben Imami from the Albanian Democratic Alliance who had initiated the OfR's audit was replaced with Et'hem Ruka of the Socialist Party (SP). The affiliation of both Ruka and Lita with the SP and both their adherence with then embattled Prime Minister Fato Nano's entourage explain why the former Commissioner Lita was able to go away with the embezzlement.

<sup>7</sup> Prescreening was a policy strongly supported by the UNCHR; it reflected the concern of then UNHCR Ruud Lubbers to engage in disentangling the mixed flows of refugees entering the EU territories. Such mixed flows are said to contain both refugees and economic migrants. Lubbers' approach reflected its awkward compromise with the government of some EU member countries who happened to be major donors of UNHCR, and were facing serious domestic challenges from both limited resources to deal with high numbers of asylum applications, and a growing tide of anti-immigration mood reflected both as public opinion and rise of anti-immigration parties and politicians. See for instance, Ruud Lubbers, "Tackling the Causes of Asylum." *The Guardian*, June 23, 2002 <http://www.guardian.co.uk/society/2002/jun/23/immigrationandpublicservices.immigration> [Accessed March 2011]; Ruud Lubbers, "Make Asylum Fair, Not Fast." *The Guardian*, 3 November, 2004 <http://www.guardian.co.uk/world/2004/nov/03/eu.immigrationandpublicservices> [Accessed March 2011].

<sup>8</sup> European Commission. "Commission Opinion on Albania's application for membership of the European Union," COM (2010)680, Brussels, 09 November 2010, SEC(2010) 1335. Available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/al\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_opinion_2010_en.pdf) [Accessed February].

<sup>9</sup> Also, personal communication with Ali Rasha, former director of the Refugee Reception Center, 2010. According to Rasha, the asylum-seeker reception center in Babrru hosts few families from the Kosovar refugee wave of 1999 (a total of 12-13 persons). The staff of the Center counts 15 staffers and 6 policemen.

<sup>10</sup> Commission of the European Communities (2006) "Albania 2006 Progress Report," COM 2006 649 final, November 8. [http://www.delalb.ec.europa.eu/en/news/al\\_sec\\_1383\\_en.pdf](http://www.delalb.ec.europa.eu/en/news/al_sec_1383_en.pdf) [Accessed February 2011].

<sup>11</sup> Ibid.

<sup>12</sup> See for instance Ruud Lubbers. "Tackling the Causes of Asylum"; and Ruud Lubbers. "Put an End to Their Wandering."

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<sup>13</sup> As Mr. Lubbers writes:

It is essential that such an initiative takes place within the EU's borders. Reception centres then would be bound by EU legal standards. That is important not only to safeguard the human rights of people being assessed but also because it would reduce the legal obstacles states would face if the centres were located outside the EU. The accusation of burden-shifting would not arise.

See Ruud Lubbers. "Put an End to Their Wandering."

<sup>14</sup> During our efforts to keep the ZpR alive in 2001-2002, we bowed to the UNHCR pressure to implement a prescreening policy and, given the time of the beginning of its implementation, it was a unique procedure in dealing with migration fluxes. During my meetings with Albanian officials of the MPO, including then Minister Ilir Gjoni, I learned that the Albanian government had neither knowledge nor opinion about this topic. It was perhaps my position in the politics of the country or minister's inclination to refugee topics—he worked for the UNHCR BoT before he became minister—that allowed us contacts with local, but he did not promise any institutional engagement from his ministry. From the entire government of Albania, only its vice prime minister, Skender Gjinushi, who was also minister of social affairs and assistance showed some interests on the asylum policies, mainly in issues that affect social aspects of refugee protection.

<sup>15</sup> Personal communication with Ali Rasha, former director of the Refugee Reception Center, 2010.

<sup>16</sup> Furthermore, the Commission emphasized that

By-laws are required to implement the 2003 Law on local integration and family reunion, in particular to allow development of a system for local integration of refugees. Albania's protection regime for those granted asylum remains weak, especially its judicial aspects. Staff changes as a result of the restructuring of the directorate for nationality and refugees have continued to hinder its capacity and delay decision-making. Reduced capacity led to shortcomings in implementation of the action plans for asylum and for management of asylum cases. Further training is required. Coordination with the national migration system is at an early stage. Improved coordination with the border police is required in order to implement the pre-screening system properly. The expertise of the staff running new asylum centres remains weak. The impact of readmission agreements on asylum system capacity has not yet been properly evaluated. In general, Albania has partially met its targets in the field of asylum.

See Commission of the European Communities. "Commission Staff Working Document: Albania 2007 Progress Report." Brussels, November 6, 2007. SEC(2007) 1429.

<sup>17</sup> See the website of the Albanian Ministry of Foreign Affairs [http://www.mfa.gov.al/index.php?option=com\\_content&view=article&id=5596%3Amlv-ja-dhe-liberalizimi-i-vizave&catid=64%3Amlv-ja-dhe-liberalizimi-i-vizave&Itemid=65&lang=en](http://www.mfa.gov.al/index.php?option=com_content&view=article&id=5596%3Amlv-ja-dhe-liberalizimi-i-vizave&catid=64%3Amlv-ja-dhe-liberalizimi-i-vizave&Itemid=65&lang=en) [Accessed March 2011]; and also Visa Liberalization with Albania Roadmap <http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Albania.pdf> [Accessed March 2011].

<sup>18</sup> Commission of the European Communities. "Commission Staff Working Document: Albania 2008 Progress Report." Brussels, 5.11.2008 SEC(2008) 2692.

<sup>19</sup> Commission of the European Communities. "Commission Staff Working Document: Albania 2009 Progress Report." Brussels, 14.10.2009 SEC(2009) 1337. In addition the Report noted that

The new law ensures that appeals against decisions of the Department for Citizenship and Refugees (DCR) can be lodged directly before a court. Further efforts are needed to continue shortening appeal procedures and to provide training to DCR staff and judges on asylum and international protection, including the provisions of the new law. The DCR is responsible for managing the asylum procedure and entitled to take decisions of first instance on asylum claims. Its staff has received extensive training from international experts. However, regular training

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of the border police and coordination with the DCR is needed in order to ensure the effectiveness of the pre-screening procedure. During 2008, 13 people applied for asylum, eight of whom received refugee status. In August 2009, there were 99 refugees in Albania. The facilities of the national reception centre for asylum seekers in Babrru have been upgraded and are in good condition.

<sup>20</sup> Commission of the European Communities. "Analytical Report accompanying the Communication from the Commission to the European Parliament and the Council/Commission Opinion on Albania's application for membership of the European Union." Brussels, November 9, 2010. SEC(2010) 1335. In addition, the Opinion noted:

A reception centre for asylum seekers has been fully operational since May 2010. The asylum system has sufficient human resources and capacity to deal with its current low caseload. In February 2010, there were 69 recognised refugees and 29 asylum applicants. However, in case of a higher influx of asylum seekers, the Department for Citizenship and Refugees would need additional and more specialised staff. Albania is more of a transit country for potential refugees on their way to the EU. The asylum seekers are mostly ethnic Albanians from Kosovo. Provision of identity documents for refugees needs to be ensured in order to guarantee them effective access to the rights conferred by Albanian legislation, and their integration needs to be further improved. Legislation should exempt asylum seekers and refugees from obligations to provide official documents issued in their country of origin. Legislation should specify an age limit for fingerprinting asylum seekers and migrants. More comprehensive statistical data needs to be compiled in the field of asylum.

<sup>21</sup> For the dire conditions of these communities in Kosovo and the neighboring countries see "Roma and Ashkali in Kosovo: Persecuted, Driven Out, Poisoned." <http://www.gfbv.de/inhaltsDok.php?id=612> [Accessed March 2011]; also Report of the OSCE-ODIHR Roundtable "Sustainable Solutions for Displaced Roma, Ashkali and Egyptians and Policies to Improve the Reintegration of Repatriated Roma." Organized in co-operation with the Serbian Ministry of Human and Minority Rights, Belgrade, 16 April 2010. [http://xa.yimg.com/kq/groups/6118059/1066501218/name/REPORT+-+Sustainable+Solutions+for+Displaced+Roma\\_Ashkali+and+Egyptians.pdf](http://xa.yimg.com/kq/groups/6118059/1066501218/name/REPORT+-+Sustainable+Solutions+for+Displaced+Roma_Ashkali+and+Egyptians.pdf) [Accessed March 2011]; and "UNHCR Global Report 2003: The Former Yugoslav Republic of Macedonia." <http://www.unhcr.org/40c6d7560.html> [Accessed March 2011].

<sup>22</sup> See for instance Risto Karajkov. "Macedonia: Stuck in the Waiting Room." Osservatorio Balkani and Caucaso, June 14, 2010 <http://www.balcanicaucaso.org/eng/Regions-and-countries/Macedonia/Macedonia-Stuck-in-the-Waiting-Room> [Accessed March 2011].

<sup>23</sup> Personal communication with Arbën Xhaferi.

<sup>24</sup> Commission of the European Communities. "Former Yugoslav Republic of Macedonia: Stabilisation and Association Report. Brussels, April 4, 2002, SEC(2002) 342.

<sup>25</sup> Ibid.

<sup>26</sup> In its 2003 Association and Stabilization Report, the European Commission pointed out that  
The temporary protection regime applied to the refugees does not meet EU and international standards (2,756 according to the UNHCR). A proper legislation on Asylum, based on international and EC standards, should be adopted without further delay in order to give them a clearer status.

Later, the Report repeats the same sentence as the 2002 Report when it asks the Macedonian government to  
Adopt a new asylum law including adoption of the secondary legislation, and improve capacity to process asylum applications, establish an independent second instance.

Curiously, a footnote for this sentence explained: "Recommendations included in the 2002 SAP Report, basically not implemented."

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See Commission of the European Communities. "Former Yugoslav Republic of Macedonia: Stabilisation and Association Report." Brussels, March 26, 2003, SEC(2003) 342 .

<sup>27</sup> Commission of the European Communities. "Analytical Report for the Opinion on the application from the former Yugoslav Republic of Macedonia for EU membership." Brussels, November 9, 2005. SEC (2005) 1425, p. 32.

<sup>28</sup> Ibid. In 2005, the European Commission highlights the fact that "so far very few have been recognized as refugees, and most applicants have been granted humanitarian protection which is a status with limited entitlements and duration.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> See Feijen (2007: 506-7).

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> See Commission of the European Communities. "Analytical Report for the Opinion on the Application from the Former Yugoslav Republic of Macedonia for EU Membership." Brussels, November 9, 2005, SEC (2005) 1425; and Commission of the European Communities. "Commission Opinion on the Application from the Former Yugoslav Republic of Macedonia for Membership of the European Union." Brussels, November 9, 2005, COM (2005) 562.

<sup>35</sup> European Council. "Council Decision of 30 January 2006 on the Principles, Priorities and Conditions Contained in the European Partnership with the Former Yugoslav Republic of Macedonia and Repealing Decision 2004/518/EC. *Official Journal of the European Union*. February 7, 2006.

<sup>36</sup> As the Report mentions,

There have been no significant developments in the field of asylum. The implementing legislation for the Law on Asylum and Temporary Protection is still missing. The Law still lacks provisions for subsidiary protection. Further legislative alignment and administrative strengthening are necessary. In this area, the former Yugoslav Republic of Macedonia is moderately advanced.

See Commission of European Communities. "The former Yugoslav Republic of Macedonia 2006 Progress Report." Brussels, November 8, 2006. SEC (2006)1387.

<sup>37</sup> Feijen (2008: 507).

<sup>38</sup> Explicitly, the Report notes that

Amendments to the law on asylum and temporary protection have been adopted. The amendments take account of the provisions of the qualification directive, which also regulates subsidiary protection. However, the provisions concerning subsidiary protection will not apply until 1 July 2008. Asylum procedures are not yet fully in line with European standards, and proper implementation of the law has still not been ensured, especially as regards issuing identity documents for people covered by the law, decision-making, and the appeals procedure. The handbook on reception centres for asylum-seekers has been published. The reception centre is not yet operational and the administrative capacity remains weak. A central database for aliens, covering asylum, migration and visas, has not yet been developed. There is still a lack of staff, proper equipment and budgetary support. In this area the country is not yet sufficiently prepared.

See Commission of European Communities. "The former Yugoslav Republic of Macedonia 2007 Progress Report." Brussels, November 6, 2007, SEC(2007) 1432.

<sup>39</sup> "See Roadmap on visa free travel for all citizens of the former Yugoslav Republic of Macedonia." May 8, 2008 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/724> (Accessed March 2011); also "Visa Liberalisation with the Former Yugoslav Republic of Macedonia." <http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Macedonia.pdf> [Accessed March 2011].

<sup>40</sup> However, the Report also noted that

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asylum procedures are not yet fully in line with European standards. The identity documents stipulated in the implementing legislation were still not being issued to people covered by the law. The decision-making procedures and appeals system require further improvement. Amendments to the Law on asylum and temporary protection, notably in the area of subsidiary protection, have yet to be enacted. The authorities have still not fully taken over from the international community responsibility for providing financial and material assistance for asylum-seekers. There is still a lack of properly trained staff, proper equipment and adequate budgetary support.

See Commission of European Communities. "The former Yugoslav Republic of Macedonia 2008 Progress Report." Brussels, November 5, 2008, SEC(2008) 2695.

<sup>41</sup> However, the Report went on by pointing also to hovering problems:

Amendments to the Law on Asylum and Temporary Protection were adopted, but the law is still not fully aligned with the *acquis*. The provisions concerning subsidiary protection were applied. The administrative court, which has jurisdiction over refugee cases previously handled by the Supreme Court, is operational, but there are some shortcomings in its decision-making, notably in appeal cases (*See also Political criteria – Judiciary and Chapter 23*). The administrative court needs to be given powers by law to conduct independent judicial review of the substance of asylum decisions. Further efforts are required by the authorities to take on full responsibility for providing financial and material assistance for refugees and asylum-seekers. The administrative capacity has improved. Identity documents have started to be issued, though at a slow pace. However, asylum procedures are still not fully in line with European standards. A central database for aliens, covering asylum, migration and visas, will have to be developed.

See Commission of European Communities. "The former Yugoslav Republic of Macedonia 2009 Progress Report." Brussels, October 14, 2009, SEC(2009) 1335.

<sup>42</sup> See Commission of European Communities. "The former Yugoslav Republic of Macedonia 2009 Progress Report." Brussels, November 9, 2010, SEC(2010)1332.

<sup>43</sup> "Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office." *Official Journal of the European Union*, May 29, 2009.

<sup>44</sup> See for instance Foucault (1994).

<sup>45</sup> For ERF see "Council Decision of 28 September 2000 establishing a European Refugee Fund (2000/596/EC). *Official Journal of the European Union*, October 6, 2000; for EASO see "Regulation (EU) No 439/2010 of the European Parliament and the Council of 19 May 2010 Establishing a European Asylum Support Office. *Official Journal of the European Union*, May 29, 2010; and for the Dublin II, see "Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national." *Official Journal of the European Union*, February 25, 2003.

<sup>46</sup> See for instance "Joint Action of 27 April 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the financing of specific projects in favour of asylum-seekers and refugees."

(98/305/JHA). *Official Journal of the European Union*, May 9, 1998.

<sup>47</sup> Council of the European Union. "Common Statement by Belgium, Hungary, Poland, Denmark and Cyprus on Immigration and Asylum." 17223/10. November 30, 2010.

<sup>48</sup> "Opinion of the European Economic and Social Committee on 'The added value of a common European asylum system both for asylum seekers and for the EU Member States' (exploratory opinion)" (2011/C 44/03). *Official Journal of the European Union*, February 11, 2011.

<sup>49</sup> "Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted." *Official Journal of the European Union*, September



*Official Journal L 304*, 30/09/2004 P. 0012 - 0023

<sup>50</sup> “Opinion of the European Economic and Social Committee on ‘The added value of a common European asylum system both for asylum seekers and for the EU Member States’ (exploratory opinion).”

<sup>51</sup> European Commission. “Agenda 2000 - For a stronger and wider Union.” COM (97) 2000 final, 13 July 1997. *Bulletin of the European Union*, Supplement 5/97.

<sup>52</sup> In spite of the theoretical approach, some scholars consider the asylum and immigration issue in the EU as a matter of security,<sup>52</sup> while some others consider it as an economic issue.<sup>52</sup> See Messina and Thouez (2002); Peshkopia (2005a, b, c); and also Busch (1999); Lavenex (2001; 1999: 115-124; 1998: 275); Lavenex, and Uçarer, eds. (2002: 75); Lindstrom (2003).

<sup>53</sup> See “Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorization.” *Official Journal of the European Union*, December 19, 2007

<sup>54</sup> Bertotto (2003).

<sup>55</sup> Risto Karajkov. “Macedonia: Stuck in the Waiting Room.”

<sup>56</sup> Bruno Waterfield. “Albania to Apply for EU Membership.” *The Telegraph*. April 27, 2009; also “Albania Submits bid for European Union Membership.” *Deutsche Welle*. April 28, 2009; and Mirela Bogdani. “Aplikimi në BE, Pacipëri dhe Mashtrim” [Application for the EU, Shamelessness and Deception]. *Shekulli*. April 28, 2008.

<sup>57</sup> See for instance “Asylum Applications from Serbia, Macedonia and Montenegro are to be Processed Within 48 Hours. Embassy of Norway in Skopje. [http://www.norway.org.mk/Embassy/visas/News/visa\\_notification/](http://www.norway.org.mk/Embassy/visas/News/visa_notification/) [Accessed March 19, 2011]; Norwegian Directorate for Immigration. “Asylum Applications from Serbia, Macedonia and Montenegro is Processed in 48 Hours.” March 11, 2010. <http://www.udi.no/Norwegian-Directorate-of-Immigration/News/2010/Asylum-applications-from-Serbia-Macedonia-and-Montenegro-is-processed-in-48-hours/> [Accessed March 2011]; “EU Faces 'Alarming' Rise in Serbia, Macedonia Asylum Seekers.” October 10, 2010. <http://www.eubusiness.com/news-eu/immigration-serbia.6mh> [Accessed March 2011]; “Failed Asylum Seekers Return Home to Serbia, Macedonia.” *Expatica*, December 3, 2010. [http://www.expatica.com/be/news/local\\_news/Failed-asylum-seekers-return-home-to-Serbia-Macedonia-60984.html](http://www.expatica.com/be/news/local_news/Failed-asylum-seekers-return-home-to-Serbia-Macedonia-60984.html) [Accessed March 2011]; “Europe Hit by Scores of Western Balkan Asylum Seekers.” <http://www.euractiv.com/en/enlargement/europe-hit-scores-western-balkan-asylum-seekers-news-498992> [Accessed March 2011].

## CHAPTER VIII

### CONCLUSIONS

Membership conditionality continues to be a powerful tool of international organizations (IOs) to improve the democratic standing of their membership aspiring countries. However, the results vary depending on the leverage those IOs have on the targeted country as well as on the intensity of conditionality. The EU has introduced membership conditionality with the signing of the Treaty of Amsterdam, 1997, and has used it ever since to affect policy changes in the EU membership aspiring countries with varying results. Previous research has analyzed EU membership conditionality as an overarching policy aimed at steering democratization rather than as a set of policies trying to affect specific reforms. My argument suggests a sectorial contextual approach to studying EU membership conditionality. The contextual sectorial approach is a framework for explaining the effects of EU membership conditionality on specific sectorial reforms through mid-level theories. These theories view the reform outcome as a result of the interplay between EU and domestic leaders' interests in that specific reform. Arguably, the change of actors' interests on a certain reform will alter the outcome. These interests are context specific, and often might not match the interests of the same actors in other reforms.

I assume two sets of major actors to affect Eastern European (EE) institutional reforms: the EU institutions and domestic leaders. Such an assumption fits the highly institutionalized EU political stage and the weak institutionalization in Eastern European countries. In contrast, highly institutionalized EU makes the role of individual leaders less relevant than the activity of its institutions. Furthermore, the recent EU internal reform aims at the strengthening the role of EU institutions, thus decreasing even further the role of national leaders in its decision making. Differently, in the poorly institutionalized Eastern Europe, the collapse of communism and its institutions created a large vacuum that was filled by power-driven leaders.

Reliance on a rational choice approach facilitates the mapping of Eastern European leaders' interests in particular reforms. Their policy choices reflect their power

driven agendas. However, the process tracing might confound causes with effects. In order to escape this problem I have employed a combination of analytical tools. First, a division of the historical periods between “extraordinary politics” and “ordinary politics” as suggested by Balcerowicz (2002) would facilitate our assignment of leaders’ interests in certain reforms during the first revolutionary years of transformation (extraordinary politics) as positive. Assigning leaders’ interests in specific sectorial reforms during period when politics settles in its own routine (ordinary politics) requires a more careful analysis. As an initial guideline we can use the observation that governments work to enact reforms during their first half of tenure, while dedicating more time and resources to power politics in their second term. In addition, governments are interested in enacting reforms that would satisfy their constituents, but would not spend resources in reforms deemed less necessary for the country. Governments might also reverse reforms if that serves their power driven agenda.

Assessing the EU interest in Eastern European institutional reforms is a more complicated issue since individualism assumed in the case of Eastern European countries might be difficult to apply to EU institutions. EU interests rest primarily on democratic stability, and its interests in eastward enlargement rest on the need to expand that area of continental security without jeopardizing the internal integration of the Union. Earlier efforts have suggested that consociational theory can help to explain the nature of the EU as a stable democracy of the deeply divided society of its member states. I expand that argument by adding that also the EU interests toward the eastern enlargement can be explained by the consociational theory. If consociational practices have brought about the EU as a stable democracy, so can they help in transforming the EU membership aspiring countries to states receptive to consociational practices. Here we have two cases; first, in the case of EU membership aspiring countries with unified societies, the EU simply conditions institutions that would be receptive to the EU consociational practices once these countries join the EU; second, in EU membership aspiring countries with divided societies, the EU conditions consociational practices in order to politically homogenize the society as a single pillar. That divided society would become a member state of the democratically stable EU. Only then these countries’ institutions can become receptive to the EU consociational practices when that country joins the EU.

A revisiting of the consociational theory reveals some shortcoming: the tautological relationship between the causal consociational practices and the consociational democracy as a dependent variable. The EU efforts focus on strengthening its democratic stability, and consociational practices are simply tools of achieving. Therefore, I no longer refer to the EU as a consociational democracy but as a stable democracy built on consociational practices, but not only on them.

The sectorial contextual approach and the consociational approach to the EU eastward expansion are intrinsically linked. While the latter explains why the EU condition institutional reforms in the EU, the former explains why institutional reforms develop the way they do. Implicitly, the consociational approach to EE eastward enlargement explains the source of EU interest in EE institutional reforms as well as the intensity of EU conditions in different sectorial reforms, while the sectorial contextual approach explains the outcome of the reforms when both domestic and foreign variables are taken into account. The consociational approach helps us to understand the source of EU conditions and, by understanding the rationale behind these conditions, also to evaluate their intensity; the sectorial contextual approach expands our understanding and explanation of specific EE institutional reforms by adding to the consociational approach domestic leaders' political preferences about these specific reforms and other independent structural variables that reflect the social context where a specific reform occurs.

I built a series of hypotheses that explain varying reform outcomes contingent of the combination of EU's and domestic leaders' interests on that reform. Specifically, I argue that if the EU and domestic leaders' interests in a sectorial approach are both positive, this is the best case scenario likely to result in swift and successful reform. If only the domestic leaders' interests in a reform are positive but EU interests are neutral, we still can have a successful reform; if the EU interests in a certain sectorial reform are positive but domestic leaders' interests in that reform are negative, the reform stalls until the EU membership conditionality manages to change domestic leaders' interests in that reform; if the EU interests in certain sectorial reform are positive, but domestic leaders' interests in that reform are neutral, we have slow reform progress until the EU membership conditionality manages to turn domestic leaders' interests to positive. And

finally, if both the EU and domestic leaders are not interested in certain reforms, no progress happens in those sectors.

The empirical analysis shows that those hypotheses are helpful to explain the effects of EU membership conditionality in specific Albanian and Macedonian institutional reforms. I chose these countries because they represent some overlooked cases in studying membership conditionality and because the findings can be instructive for both these countries, other Western Balkan countries (Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, and Serbia) as well as Turkey and some European countries newly created with the demise of the Soviet Union (Belarus, Moldova, Ukraine and the Transcaucasia (Armenia, Azerbaijan, and Georgia)). Indeed, even though the EU does not currently consider these countries as potential candidates, it has never ruled out their potential to become EU member countries. Their similarities help to simplify the empirical analysis, while their differences help elucidate both the case of EU membership conditionality to an aspirant country with a unified society and in a divided one. Moreover, the long road toward the EU provides more variations in both causal factors and reform outcomes. I was interested only in discussing the effects of EU membership conditionality in Eastern European institutional reforms, thus I only focused in pre-accession cases. Arguably, the post-accession developments show different reform dynamics from the one that I exposed here due to changes in the configuration of new member country's domestic political stage. In the long run, EU membership conditionality and the EU accession are expected to empower other domestic actors and interest groups aside the ruling elites (Hollyer 2010).

From other possible explanations, only the factor of ethnic homogeneity/heterogeneity seems to play a key role. Ethnic composition of the country highly determines both EU and domestic leaders' interests. It also defines the EU prevailing preferences for stability over democracy, such as the case of Macedonia of the 1990s. Only when stability is not feasible without democracy, does the EU step in with conditioning consociational practices (but not only them) in order to assure country's social cohesion. In countries with unified societies, EU does not condition consociational practices *per se*, but the institutional design it is offering is such as to facilitate country's

institutional adaptation with the EU consociational practices once it acquires the EU membership.

Communist legacies seem to play no role in the development of sectorial reforms. In less than two years, 1990-1991, Macedonia went from one of the most decentralized political entities in Eastern Europe (such it was within Yugoslavia) to one of the most centralized one. Even after 20 years, a violent ethnic conflict that targeted the existing centralized system, and after relentless pressure from the EU, Macedonia remains a more centralized country than Albania, although the latter comes from a totalitarian communist dictatorship. The same can be claimed for judicial reforms in both countries. By the same token, Macedonia inherited the Yugoslav adherence to the 1951 Geneva Convention and even some institutional legacy from the Yugoslav asylum system. Yet, it took the country 13 years from its independence to pass its first Law on Asylum, while Albania approved it in 1998. The same can be said in the case of constitutional reforms: Albania's 1991 Major Constitutional Provisions provided a good stepping bloc for the reforms of the 1990s, and finally the country acquired a brand new constitution in 1997, which has been highly praised as a liberal constitution. Macedonia, with the inherited Yugoslav tradition of federalism and recognition in paper and practice of a wide range of human and collective rights passed in 1991 a centralized and rigid constitution, and it took a violent ethnic conflict to amend it into a more acceptable document for all its citizens.

The previous paragraph shows that institutional memories do not last long and leaders' current preferences prevail over such memories. Both my case countries come from the Ottoman tradition as both were the last territories in the Balkans to escape the Ottoman grip. This fact prevents us from properly understanding the role of the Habsburg tradition in the particular reforms that we considered here. However, speculating from the inconsistent role that the Leninist legacy has played in these reforms both in Albania and Macedonia, one can argue that either Habsburg or Ottoman memories remain distant historical memories rather than vivid institutional memories imprinted in their societies' political consciences.

Other theories have pointed to the relevance of human capital in conducting efficient reforms in transition postsocialist countries. My historical analysis shows that such concerns are overrated, and what keeps these countries from performing in their

reform policies is the lack of political will rather than human capital. The Balkans have inherited from communism high levels of literacy, and their societies' zeal for education is reflected in the large number of students being graduated abroad as well as a relentlessly growing number of public and private institutions in both countries. Moreover, the very concept of EU membership conditionality would have been undermined by the lack of human resources, and countries efforts should have been steered toward creating human capacities rather than conducting institutional reforms. However, the fact that reforms begin to progress immediately after domestic political will supports them shows that political will is a more efficient explanation for the outcomes of institutional reforms in EU membership aspiring countries from Eastern Europe.

Reforms are often painful and often generate political costs for governments, hence their reluctance to undertake radical reform programs. EU membership conditionality has been a powerful tool both to spur Eastern European ruling elites toward reforms and shield them from domestic backlashes. Yet, while EU membership conditionality works through switching domestic leaders' preferences over reforms from negative to positive, they cannot change their mindset. Evidence from previous EU enlargements in Eastern Europe show that governments slow down reforms, or stop them altogether, when membership is already acquired. Aware of this tendency, on December 13, 2006, only days before the Bulgarian and Romanian accession scheduled for January 1, 2007, the EU establish the Mechanism for Cooperation and Verification for Bulgaria and Romania (MCVBR). When these countries joined, the EU was aware of their need for further progress in sectors of judicial reform, corruption and organized crime. In order both to facilitate their accession and safeguard the workings of its policies and institutions, the EU established MCVBR to help them address these outstanding shortcomings.

In June 2007, the EU released its first Report Progress on Bulgaria since the country joined the EU. The Report is critical; highlighting the Bulgarian Government's commitment to judicial reform and cleansing the system of corruption and organized crime, the report noted "a clear weakness in translating these intentions into results" and that "much remains to be done." The Report concluded that progress "is still insufficient."<sup>1</sup> An *Interim Report* on progress in Bulgaria with judiciary reform and the fight against corruption and organized crime released in February 2008 pointed to the

same problems.<sup>2</sup> One year later, in July 2009, with no progress noticed in these sectors, the EU Commission decided to punish Bulgaria by cutting nearly half a billion Euros, which effectively stopped the payments of some €250 million (\$394 million) earmarked for institutional reforms.<sup>3</sup>

In July 2009, Romania got away without fund cuts in the judiciary, anti-corruption and anticrime sectors (although it suffered a suspension of agricultural payments worth €142 million, no linkage was made with such sectors). In February 2009, the European Commission released its Interim Reports for Bulgaria and Romania. The report on Bulgaria acknowledges the “efforts” made by the authorities since July 2008, especially the setting up of joint investigation teams composed of prosecutors, intelligence officers and policemen to fight organized crime, but it required “convincing and tangible results.”<sup>4</sup> However, the Interim Report on Romania was very critical. It highlighted that “[t]he pace of progress noted in the Commission's report of July 2008 has not been maintained,” and that “[i]n most other areas, shortcomings identified by the Commission in July remain.”<sup>5</sup>

Reportedly, several member states, namely Germany, France, UK, the Netherlands, Belgium, Finland, Sweden, Denmark and Austria, threatened fund cuts if the Progress Report scheduled for June 2009 would not show progress in these sectors.<sup>6</sup> It did not happen, but these developments show how volatile the progress in Eastern European institutional reforms continues to be even after they join the EU. With membership conditionality inapplicable to member countries, the Union tries to enforce compliance by using alternative coercive tools. But these developments also show how difficult and long the road toward reforms in Eastern Europe would have been without EU membership conditionality.

My research reveals both strengths and weaknesses of membership conditionality. A better awareness of those strengths and weaknesses would help to apply it more effectively. As a concept, membership conditionality might be related to a number of policy areas, and different IOs focus on different policy areas. First, membership conditionality works only when it manages to shift domestic leaders’ policy preferences to compliance with policies prescribed by the IO where a country aspires to join. If the benefits of membership are higher than the domestic cost of a sectorial reform, then governments proceed with that reform. Second, conducting institutional reform under the



pressure of membership conditionality might not represent the perfect way to institute reforms, and often the tug-of-war between the IO's and domestic leaders' competing policy preference might increase the cost of reforms. The best way to reforms is domestic leaders' willingness to undertake them. Membership conditionality emerges when such willingness does not exist.

Moreover, membership conditionality is contingent upon the character and scope of the IO. The more an IO has a stake in a membership aspiring country's particular sectorial reform, the more it will pressure for reforms in that policy area. In turn, that character represents the single most important factor of membership conditionality's strength. Membership conditionality's rationale rests on its power to alter leaders' policy preferences. Thus, for the EU, eastward enlargement brings the challenge of instability, and EU membership conditionality aims at assuring that stability, the primary goal of the EU. Therefore, EU membership conditionality is a tool in function of that democratic stability.

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<sup>1</sup> "Report From the Commission to the European Parliament and the Council on Bulgaria's Progress on Accompanying Measures Following Accession." Brussels, June 27, 2007 COM(2007) 377 final. At <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0377:FIN:EN:PDF> [Accessed April 2011].

<sup>2</sup> "Interim Report on Progress in Bulgaria with Judiciary Reform and the Fight against Corruption and Organised Crime." At <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/73&format=HTML&aged=0&language=EN&guiLanguage=en> [Accessed April 2011].

<sup>3</sup> Other financial cuts include 115 million euros in funding chiefly meant for highway construction. A freeze was also imposed on 121 million euros for Bulgaria's agricultural sector.

"EU Cuts Funding to Bulgaria for Failing to Fight Organized Crime." Deutsche Welle, July 23, 2008. At <http://www.dw-world.de/dw/article/0,,3507068,00.html> [Accessed April 2011].

<sup>4</sup> "Interim Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism." Brussels, February 2, 2009 COM(2009) 69 final. At [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/bulgaria\\_report\\_20090212\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/bulgaria_report_20090212_en.pdf) [Accessed April 2011].

<sup>5</sup> The Report concludes that

It will be crucial for Romania to achieve significant, irreversible progress by [the Progress Report scheduled for June 2009]. Romania must demonstrate the existence of an autonomously functioning, stable judiciary which is able to detect and sanction corruption and preserve the rule of law. This means in particular adopting the remaining laws needed to modernise the legal system and showing through an expeditious treatment of high-level corruption cases that the legal system is capable of implementing the laws in an independent and efficient way.

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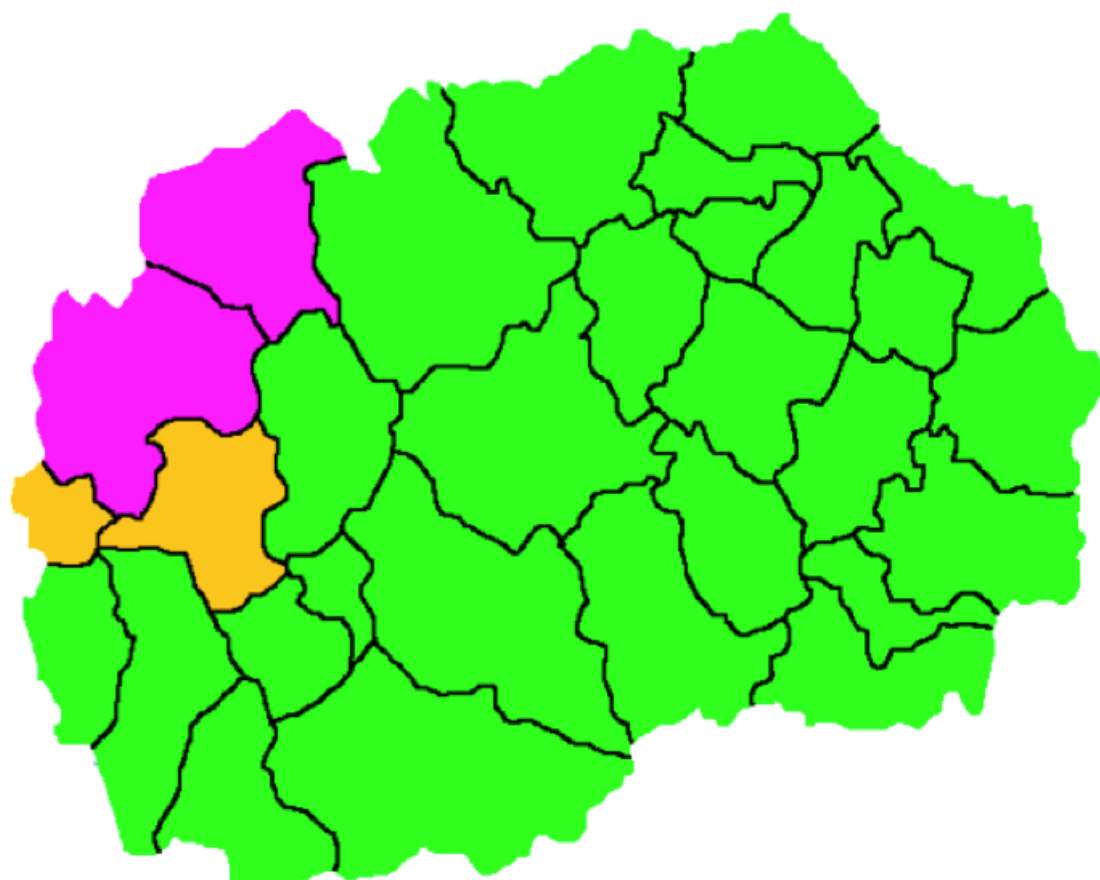
“Interim Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism.” Brussels, February 2, 2009 COM(2009) 70 final. At [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/romania\\_report\\_20090212\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/romania_report_20090212_en.pdf) [Accessed April 2011].

<sup>6</sup> Valentina Pop. “Bulgaria, Romania Risk More EU Aid Cuts” *EUobserver.com*, February 2, 2009. At <http://euobserver.com/9/27599> [Accessed April 2011].

## APPENDIX A

### THE DEMOGRAPHIC DYNAMICS OF MACEDONIA SINCE 1981\*

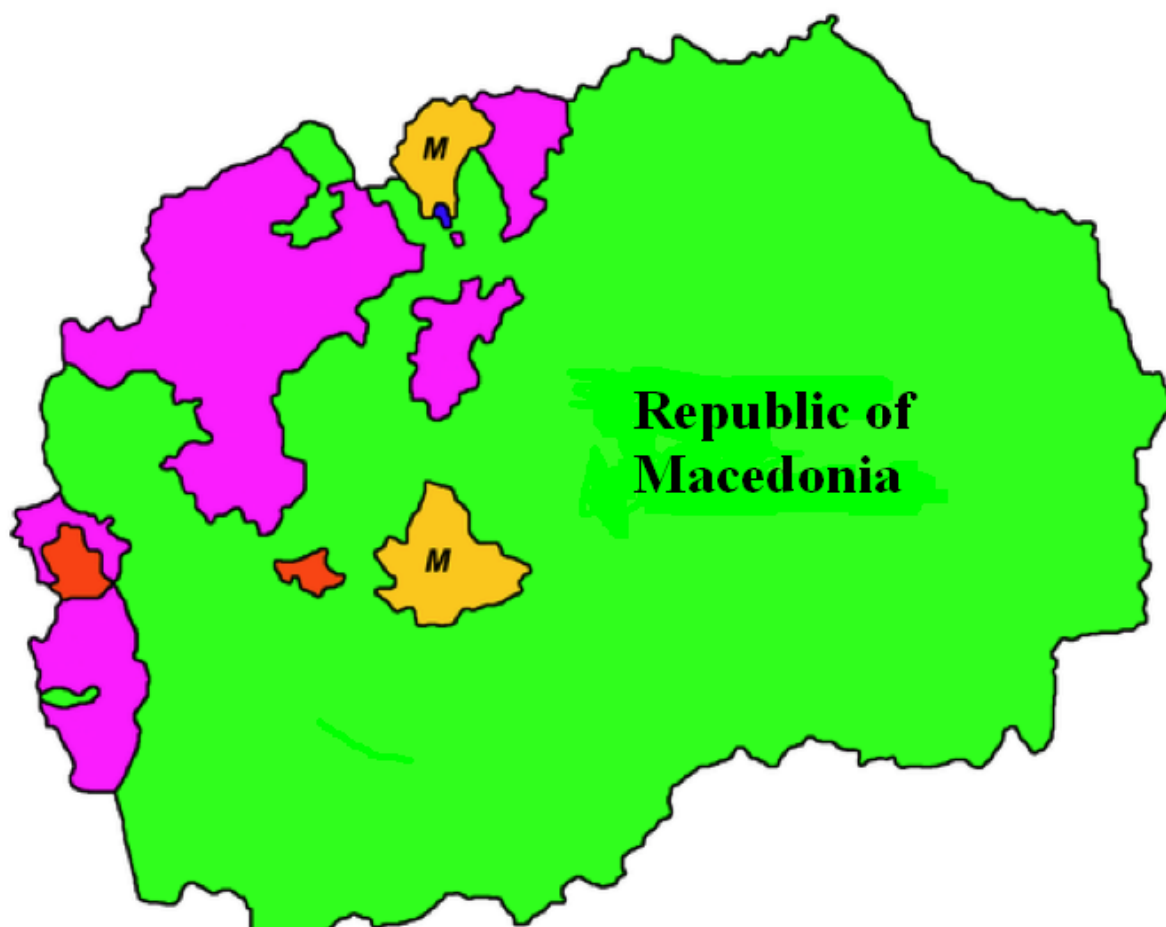
FIGURE 1 POPULATION IN MACEDONIA IN 1981 BY ADMINISTRATIVE UNITS



**Ethnic Map of the Republic of Macedonia (1981 Census)**

- - Macedonian Majority
- - Albanian Majority
- - Mixed Population

FIGURE 2 POPULATION IN MACEDONIA IN 2002 BY TERRITORY



**Ethnic map of the Republic of Macedonia  
(based on the 2002 census municipality data)**

- |  |   |
|--|---|
|  Macedonians      |  Albanians |
|  Turks            |  Roma      |
|  Mixed population | <i>M</i> Relative Macedonian majority   |

FIGURE 3 POPULATION IN MACEDONIA IN 2002 BY ADMINISTRATIVE UNITS

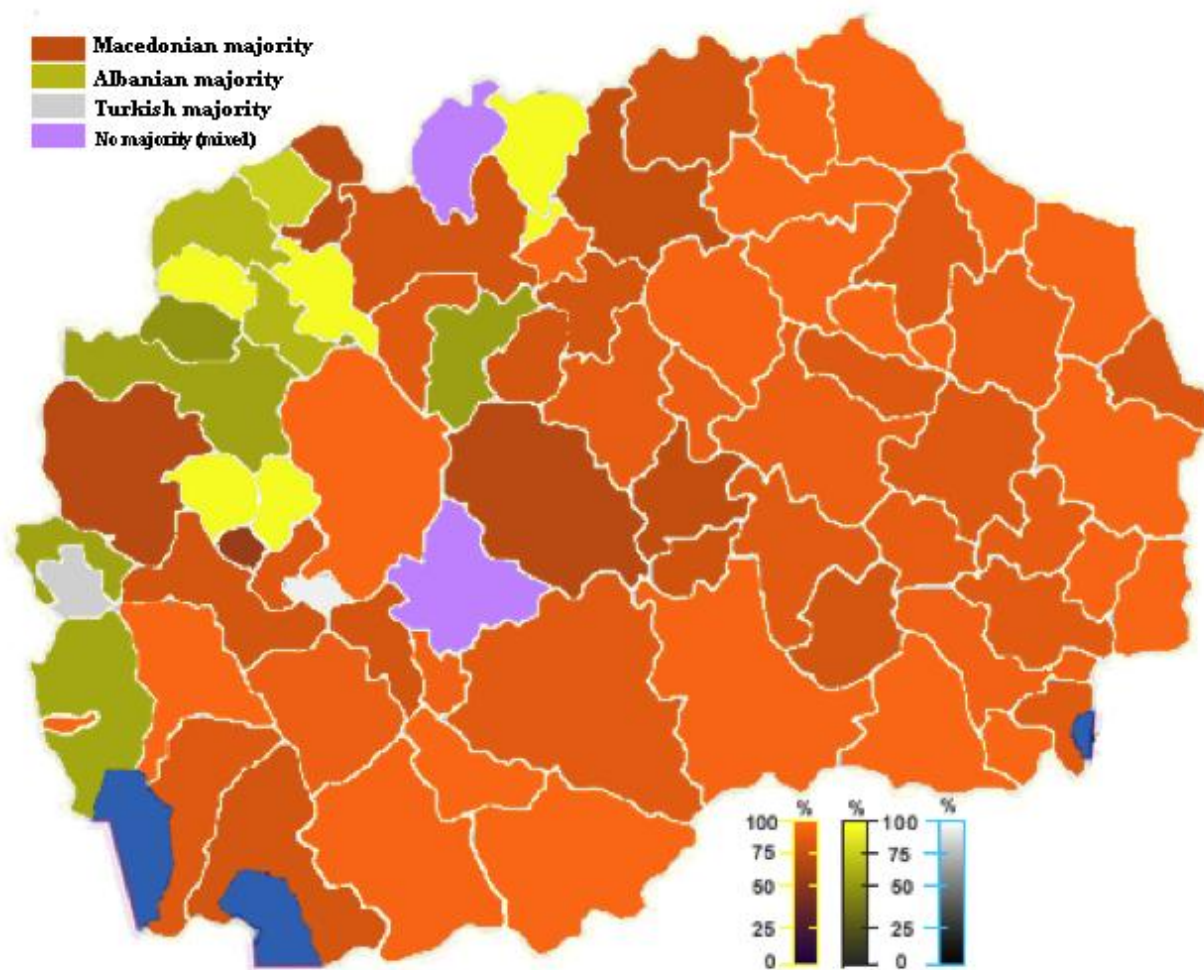


FIGURE 4 POPULATION IN MACEDONIA IN 2002 BY ADMINISTRATIVE UNITS

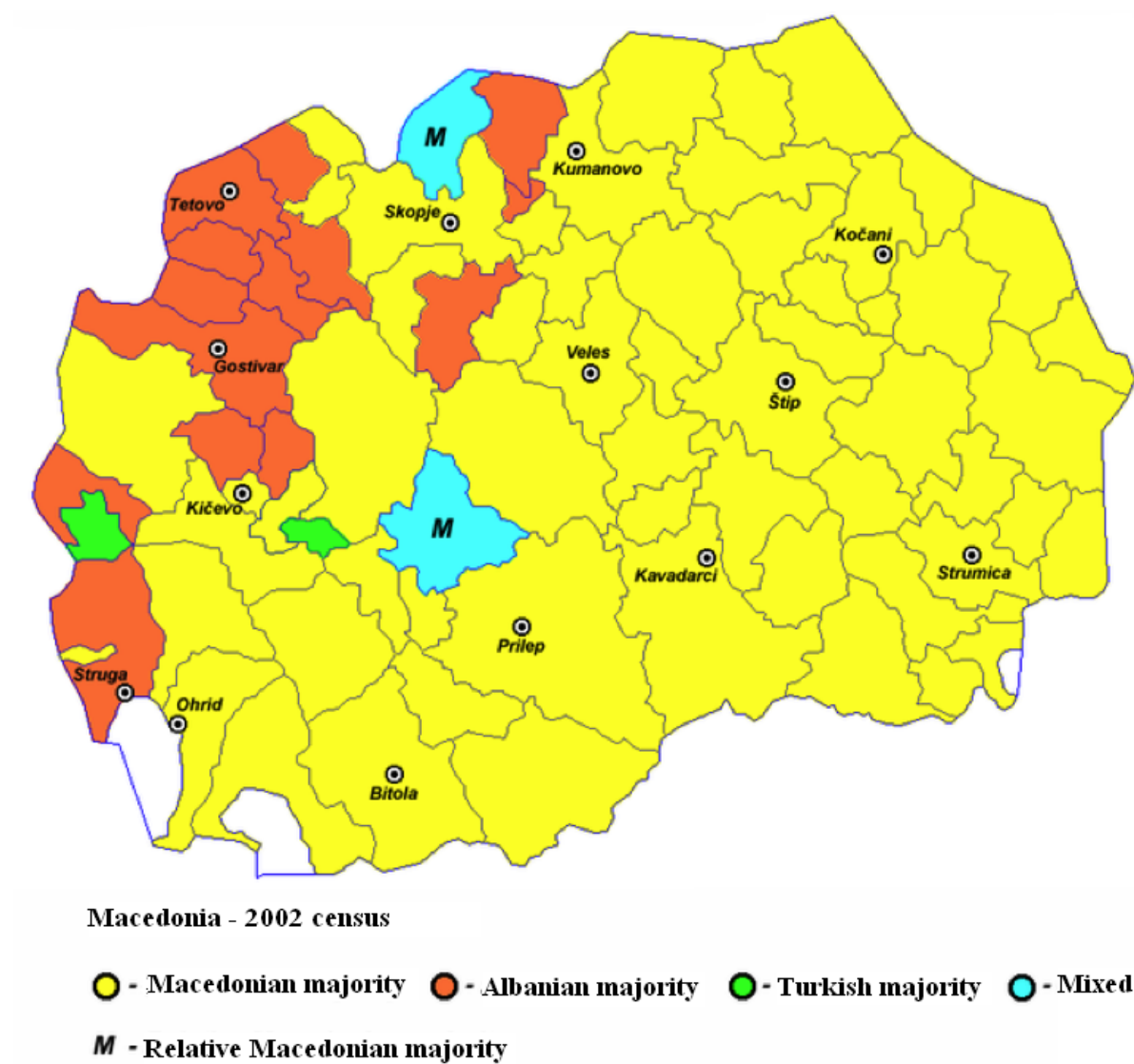
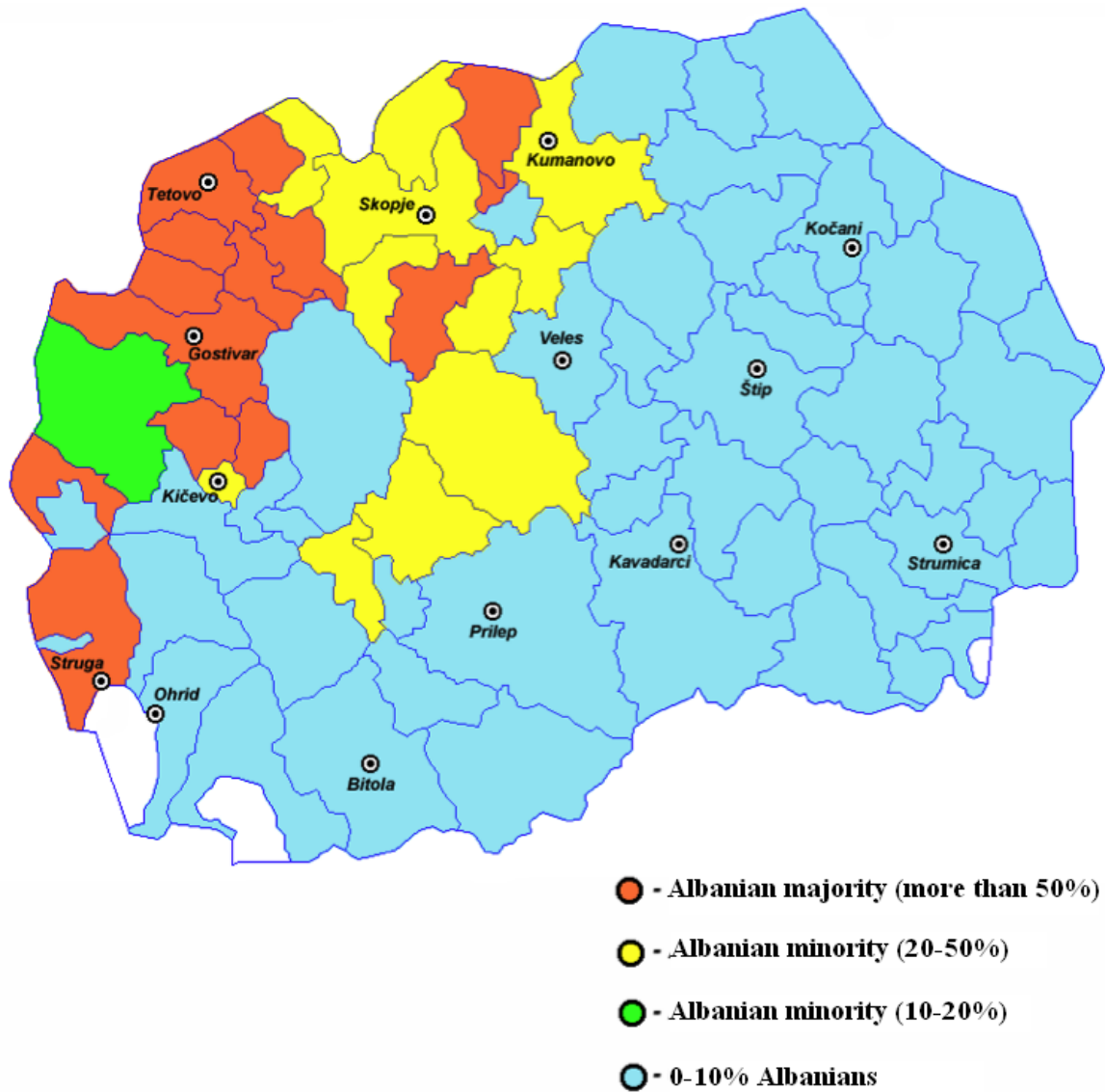


FIGURE 5 POPULATION IN MACEDONIA IN 2002 BY ADMINISTRATIVE UNITS



\* Source: Wikipedia. At [http://en.wikipedia.org/wiki/Demographics\\_of\\_the\\_Republic\\_of\\_Macedonia](http://en.wikipedia.org/wiki/Demographics_of_the_Republic_of_Macedonia).  
[Visited November 14, 2010]

## APPENDIX B

### OHRID FRAMEWORK AGREEMENT

The following points comprise an agreed framework for securing the future of Macedonia's democracy and permitting the development of closer and more integrated relations between the Republic of Macedonia and the Euro-Atlantic community. This Framework will promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens.

#### 1. Basic Principles

1.1. The use of violence in pursuit of political aims is rejected completely and unconditionally. Only peaceful political solutions can assure a stable and democratic future for Macedonia.

1.2. Macedonia's sovereignty and territorial integrity, and the unitary character of the State are inviolable and must be preserved. There are no territorial solutions to ethnic issues.

1.3. The multi-ethnic character of Macedonia's society must be preserved and reflected in public life.

1.4. A modern democratic state in its natural course of development and maturation must continually ensure that its Constitution fully meets the needs of all its citizens and comports with the highest international standards, which themselves continue to evolve.

1.5. The development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting respect for the identity of communities.

#### 2. Cessation of Hostilities

2.1. The parties underline the importance of the commitments of July 5, 2001. There shall be a complete cessation of hostilities, complete voluntary disarmament of the ethnic Albanian armed groups and their complete voluntary disbandment. They acknowledge that a decision by NATO to assist in this context will require the establishment of a general, unconditional and open-ended cease-fire, agreement on a political solution to the problems of this country, a clear commitment by the armed groups to voluntarily disarm, and acceptance by all the parties of the conditions and limitations under which the NATO forces will operate.

#### 3. Development of Decentralized Government

3.1. A revised Law on Local Self-Government will be adopted that reinforces the powers of elected local officials and enlarges substantially their competencies in conformity with the Constitution (as amended in accordance with Annex A) and the European Charter on Local Self-Government, and reflecting the principle of subsidiarity in effect in the European Union. Enhanced competencies will relate principally to the areas of public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and health care. A law on financing of local self-government will be adopted to ensure an adequate system of financing to enable local governments to fulfill all of their responsibilities.

3.2. Boundaries of municipalities will be revised within one year of the completion of a new census, which will be conducted under international supervision by the end of 2001.



The revision of the municipal boundaries will be effectuated by the local and national authorities with international participation.

3.3. In order to ensure that police are aware of and responsive to the needs and interests of the local population, local heads of police will be selected by municipal councils from lists of candidates proposed by the Ministry of Interior, and will communicate regularly with the councils. The Ministry of Interior will retain the authority to remove local heads of police in accordance with the law.

#### 4. Non-Discrimination and Equitable Representation

4.1. The principle of non-discrimination and equal treatment of all under the law will be respected completely. This principle will be applied in particular with respect to employment in public administration and public enterprises, and access to public financing for business development.

4.2. Laws regulating employment in public administration will include measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration. The authorities will take action to correct present imbalances in the composition of the public administration, in particular through the recruitment of members of under-represented communities. Particular attention will be given to ensuring as rapidly as possible that the police services will generally reflect the composition and distribution of the population of Macedonia, as specified in Annex C.

4.3. For the Constitutional Court, one-third of the judges will be chosen by the Assembly by a majority of the total number of Representatives that includes a majority of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. This procedure also will apply to the election of the Ombudsman (Public Attorney) and the election of three of the members of the Judicial Council.

#### 5. Special Parliamentary Procedures

5.1. On the central level, certain Constitutional amendments in accordance with Annex A and the Law on Local Self-Government cannot be approved without a qualified majority of two-thirds of votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

5.2. Laws that directly affect culture, use of language, education, personal documentation, and use of symbols, as well as laws on local finances, local elections, the city of Skopje, and boundaries of municipalities must receive a majority of votes, within which there must be a majority of the votes of the Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

#### 6. Education and Use of Languages

6.1. With respect to primary and secondary education, instruction will be provided in the students' native languages, while at the same time uniform standards for academic programs will be applied throughout Macedonia.

6.2. State funding will be provided for university level education in languages spoken by at least 20 percent of the population of Macedonia, on the basis of specific agreements.

6.3. The principle of positive discrimination will be applied in the enrolment in State universities of candidates belonging to communities not in the majority in the population of

Macedonia until the enrolment reflects equitably the composition of the population of Macedonia.

6.4. The official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language.

6.5. Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein. In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law, as further elaborated in Annex B. Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office will reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which will reply in that language in addition to Macedonian.

6.6. With respect to local self-government, in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian. With respect to languages spoken by less than 20 percent of the population of the municipality, the local authorities will decide democratically on their use in public bodies.

6.7. In criminal and civil judicial proceedings at any level, an accused person or any party will have the right to translation at State expense of all proceedings as well as documents in accordance with relevant Council of Europe documents.

6.8. Any official personal documents of citizens speaking an official language other than Macedonian will also be issued in that language, in addition to the Macedonian language, in accordance with the law.

## 7. Expression of Identity

7.1. With respect to emblems, next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality, respecting international rules and usages.

## 8. Implementation

8.1. The Constitutional amendments attached at Annex A will be presented to the Assembly immediately. The parties will take all measures to assure adoption of these amendments within 45 days of signature of this Framework Agreement.

8.2. The legislative modifications identified in Annex B will be adopted in accordance with the timetables specified therein.

8.3. The parties invite the international community to convene at the earliest possible time a meeting of international donors that would address in particular macro-financial assistance; support for the financing of measures to be undertaken for the purpose of implementing this Framework Agreement, including measures to strengthen local self-government; and rehabilitation and reconstruction in areas affected by the fighting.

## 9. Annexes

The following Annexes constitute integral parts of this Framework Agreement:

### A. Constitutional Amendments

B. Legislative Modifications

C. Implementation and Confidence-Building Measures

10. Final Provisions

10.1. This Agreement takes effect upon signature.

10.2. The English language version of this Agreement is the only authentic version.

10.3. This Agreement was concluded under the auspices of President Boris Trajkovski.

Done at Skopje, Macedonia on 13 August 2001, in the English language.

ANNEX A

CONSTITUTIONAL AMENDMENTS

Preamble

The citizens of the Republic of Macedonia, taking over responsibility for the present and future of their fatherland, aware and grateful to their predecessors for their sacrifice and dedication in their endeavors and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good -- the Republic of Macedonia, in accordance with the tradition of the Krushevo Republic and the decisions of the Antifascist People's Liberation Assembly of Macedonia, and the Referendum of September 8, 1991, they have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and in this regard through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, they adopt . . . .

Article 7

(1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.

(2) Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below.

(3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law.

(4) Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.

(5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law.

(6) In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

#### Article 8

(1) The fundamental values of the constitutional order of the Republic of Macedonia are:

- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;

#### Article 19

(1) The freedom of religious confession is guaranteed.

(2) The right to express one's faith freely and publicly, individually or with others is guaranteed.

(3) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law.

(4) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.

#### Article 48

(1) Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.

(2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.

(3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.

(4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

#### Article 56

(2) The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.

#### Article 69

(2) For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute.

#### Article 77

(1) The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

(2) The Public Attorney protects the constitutional rights and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.

#### Article 78

(1) The Assembly shall establish a Committee for Inter-Community Relations.

(2) The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Assembly, and five members from among the Turks, Vlachs, Romanies and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly.

(3) The Assembly elects the members of the Committee.

(4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution.

(5) The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them.

(6) In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.

#### Article 84

The President of the Republic of Macedonia

- proposes the members of the Council for Inter-Ethnic Relations;(to be deleted) . . . .

#### Article 86

(1) The President of the Republic is President of the Security Council of the Republic of Macedonia.

(2) The Security Council of the Republic is composed of the President of the Republic, the President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence [*sic*] and foreign affairs and three members appointed by the President of the Republic. In appointing the three members, the President

shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.

(3) The Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

#### Article 104

(1) The Republican Judicial Council is composed of seven members.

(2) The Assembly elects the members of the Council. Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

#### Article 109

(1) The Constitutional Court of Macedonia is composed of nine judges.

(2) The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

#### Article 114

(5) Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. The laws on local finances, local elections, boundaries of municipalities, and the city of Skopje shall be adopted by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia.

#### Article 115

(1) In units of local self-government, citizens directly and through representatives participate in decisionmaking on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

#### Article 131

(1) The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(2) The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate.

(3) The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(4) A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any

new provision relating to the subject matter of such provisions and articles, shall require a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

(5) The change in the Constitution is declared by the Assembly.

## ANNEX B

### LEGISLATIVE MODIFICATIONS

The parties will take all necessary measures to ensure the adoption of the legislative changes set forth hereafter within the time limits specified.

#### 1. Law on Local Self-Government

The Assembly shall adopt within 45 days from the signing of the Framework Agreement a revised Law on Local Self-Government. This revised Law shall in no respect be less favorable to the units of local selfgovernment and their autonomy than the draft Law proposed by the Government of the Republic of Macedonia in March 2001. The Law shall include competencies relating to the subject matters set forth in Section 3.1 of the Framework Agreement as additional independent competencies of the units of local selfgovernment, and shall conform to Section 6.6 of the Framework Agreement. In addition, the Law shall provide that any State standards or procedures established in any laws concerning areas in which municipalities have independent competencies shall be limited to those which cannot be established as effectively at the local level; such laws shall further promote the municipalities' independent exercise of their competencies.

#### 2. Law on Local Finance

The Assembly shall adopt by the end of the term of the present Assembly a law on local self-government finance to ensure that the units of local self-government have sufficient resources to carry out their tasks under the revised Law on Local Self-Government. In particular, the law shall:

- Enable and make responsible units of local self-government for raising a substantial amount of tax revenue;
- Provide for the transfer to the units of local self-government of a part of centrally raised taxes that corresponds to the functions of the units of local self-government and that takes account of the collection of taxes on their territories; and
- Ensure the budgetary autonomy and responsibility of the units of local self-government within their areas of competence.

#### 3. Law on Municipal Boundaries

The Assembly shall adopt by the end of 2002 a revised law on municipal boundaries, taking into account the results of the census and the relevant guidelines set forth in the Law on Local Self-Government.

#### 4. Laws Pertaining to Police Located in the Municipalities

The Assembly shall adopt before the end of the term of the present Assembly provisions ensuring:

- That each local head of the police is selected by the council of the municipality concerned from a list of not fewer than three candidates proposed by the Ministry of the Interior, among whom at least one candidate shall belong to the community in the majority in the municipality. In the event the municipal council fails to select any of the candidates proposed within 15 days, the Ministry of the Interior shall propose a second list of not fewer than three new candidates, among whom at least one candidate shall belong to the community in the majority in the municipality. If the municipal council again fails to select any of the candidates proposed within 15 days, the Minister of the Interior, after consultation with the Government, shall select the local head of police from among the two lists of candidates proposed by the Ministry of the Interior as well as three additional candidates proposed by the municipal council;
- That each local head of the police informs regularly and upon request the council of the municipality concerned;
- That a municipal council may make recommendations to the local head of police in areas including public security and traffic safety; and
- That a municipal council may adopt annually a report regarding matters of public safety, which shall be addressed to the Minister of the Interior and the Public Attorney (Ombudsman).

#### 5. Laws on the Civil Service and Public Administration

The Assembly shall adopt by the end of the term of the present Assembly amendments to the laws on the civil service and public administration to ensure equitable representation of communities in accordance with Section 4.2 of the Framework Agreement.

#### 6. Law on Electoral Districts

The Assembly shall adopt by the end of 2002 a revised Law on Electoral Districts, taking into account the results of the census and the principles set forth in the Law on the Election of Members for the Parliament of the Republic of Macedonia.

#### 7. Rules of the Assembly

The Assembly shall amend by the end of the term of the present Assembly its Rules of Procedure to enable the use of the Albanian language in accordance with Section 6.5 of the Framework Agreement, paragraph 8 below, and the relevant amendments to the Constitution set forth in

#### Annex A.

#### 8. Laws Pertinent to the Use of Languages

The Assembly shall adopt by the end of the term of the present Assembly new legislation regulating the use of languages in the organs of the Republic of Macedonia. This legislation shall provide that:

- Representatives may address plenary sessions and working bodies of the Assembly in languages referred to in Article 7, paragraphs 1 and 2 of the Constitution (as amended in accordance with Annex A);

- Laws shall be published in the languages referred to in Article 7, paragraphs 1 and 2 of the

Constitution (as amended in accordance with Annex A); and



- All public officials may write their names in the alphabet of any language referred to in Article 7, paragraphs 1 and 2 of the Constitution (as amended in accordance with Annex A) on any official documents. The Assembly also shall adopt by the end of the term of the present Assembly new legislation on the issuance of personal documents. The Assembly shall amend by the end of the term of the present Assembly all relevant laws to make their provisions on the use of languages fully compatible with Section 6 of the Framework Agreement.

#### 9. Law on the Public Attorney

The Assembly shall amend by the end of 2002 the Law on the Public Attorney as well as the other relevant laws to ensure:

- That the Public Attorney shall undertake actions to safeguard the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life, and that there are adequate resources and personnel within his office to enable him to carry out this function;
- That the Public Attorney establishes decentralized offices;
- That the budget of the Public Attorney is voted separately by the Assembly;
- That the Public Attorney shall present an annual report to the Assembly and, where appropriate, may upon request present reports to the councils of municipalities in which decentralized offices are established; and
- That the powers of the Public Attorney are enlarged:
  - To grant to him access to and the opportunity to examine all official documents, it being understood that the Public Attorney and his staff will not disclose confidential information;
  - To enable the Public Attorney to suspend, pending a decision of the competent court, the execution of an administrative act, if he determines that the act may result in an irreparable prejudice to the rights of the interested person; and
  - To give to the Public Attorney the right to contest the conformity of laws with the Constitution before the Constitutional Court.

#### 10. Other Laws

The Assembly shall enact all legislative provisions that may be necessary to give full effect to the Framework Agreement and amend or abrogate all provisions incompatible with the Framework Agreement.

### ANNEX C

#### IMPLEMENTATION AND CONFIDENCE-BUILDING MEASURES

##### 1. International Support

1.1. The parties invite the international community to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes, and request such efforts to be coordinated by the EU in cooperation with the Stabilization and Association Council.

##### 2. Census and Elections

2.1. The parties confirm the request for international supervision by the Council of Europe and the European Commission of a census to be conducted in October 2001.

2.2. Parliamentary elections will be held by 27 January 2002. International organizations, including the OSCE, will be invited to observe these elections.

### 3. Refugee Return, Rehabilitation and Reconstruction

3.1. All parties will work to ensure the return of refugees who are citizens or legal residents of

Macedonia and displaced persons to their homes within the shortest possible timeframe, and invite the international community and in particular UNHCR to assist in these efforts.

3.2. The Government with the participation of the parties will complete an action plan within 30 days after the signature of the Framework Agreement for rehabilitation of and reconstruction in areas affected by the hostilities. The parties invite the international community to assist in the formulation and implementation of this plan.

3.3. The parties invite the European Commission and the World Bank to rapidly convene a meeting of international donors after adoption in the Assembly of the Constitutional amendments in Annex A and the revised Law on Local Self-Government to support the financing of measures to be undertaken for the purpose of implementing the Framework Agreement and its Annexes, including measures to strengthen local self-government and reform the police services, to address macro-financial assistance to the Republic of Macedonia, and to support the rehabilitation and reconstruction measures identified in the action plan identified in paragraph 3.2.

### 4. Development of Decentralized Government

4.1. The parties invite the international community to assist in the process of strengthening local selfgovernment. The international community should in particular assist in preparing the necessary legal amendments related to financing mechanisms for strengthening the financial basis of municipalities and building their financial management capabilities, and in amending the law on the boundaries of municipalities.

### 5. Non-Discrimination and Equitable Representation

5.1. Taking into account i.a. the recommendations of the already established governmental commission, the parties will take concrete action to increase the representation of members of communities not in the majority in Macedonia in public administration, the military, and public enterprises, as well as to improve their access to public financing for business development.

5.2. The parties commit themselves to ensuring that the police services will by 2004 generally reflect the composition and distribution of the population of Macedonia. As initial steps toward this end, the parties commit to ensuring that 500 new police officers from communities not in the majority in the population of Macedonia will be hired and trained by July 2002, and that these officers will be deployed to the areas where such communities live. The parties further commit that 500 additional such officers will be hired and trained by July 2003, and that these officers will be deployed on a priority basis to the areas throughout Macedonia where such communities live. The parties invite the international community to support and assist with the implementation of these commitments, in particular through screening and selection of candidates and their training. The parties invite the OSCE, the European Union, and the United States to send an expert team as quickly as possible in order to assess how best to achieve these objectives.

5.3. The parties also invite the OSCE, the European Union, and the United States to increase training and assistance programs for police, including:

- professional, human rights, and other training;
- technical assistance for police reform, including assistance in screening, selection and promotion processes;
- development of a code of police conduct;
- cooperation with respect to transition planning for hiring and deployment of police officers from communities not in the majority in Macedonia; and
- deployment as soon as possible of international monitors and police advisors in sensitive areas, under appropriate arrangements with relevant authorities.

5.4. The parties invite the international community to assist in the training of lawyers, judges and prosecutors from members of communities not in the majority in Macedonia in order to be able to increase their representation in the judicial system.

## 6. Culture, Education and Use of Languages

6.1. The parties invite the international community, including the OSCE, to increase its assistance for projects in the area of media in order to further strengthen radio, TV and print media, including Albanian language and multiethnic media. The parties also invite the international community to increase professional media training programs for members of communities not in the majority in Macedonia. The parties also invite the OSCE to continue its efforts on projects designed to improve inter-ethnic relations.

6.2. The parties invite the international community to provide assistance for the implementation of the Framework Agreement in the area of higher education.

August 13, 2001

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